

United States
Circuit Court of Appeals⁴
For the Ninth Circuit.

WILLIAM P. HOPKINS and I. A. SHAFFER,
Jr., as Trustees of the Estate of A. C. HOP-
KINS, Deceased,

Appellants,

vs.

EARL C. BRONAUGH, as Trustee in Bankruptcy
of the Estate of MORRIS BROTHERS,
INC., Bankrupts,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Oregon.

FILED
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F. D. MORGENTHAU
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Fred Glenn.....	42
Affidavit of Charles A. Hart.....	35
Affidavit of William P. Hopkins.....	39
Answer in Reclamation of the Petition of William P. Hopkins and I. A. Shaffer, Jr., Trustees of the Estate of A. C. Hopkins..	22
Assignment of Errors Upon Appeal of William P. Hopkins and I. A. Shaffer, Jr., Trustees	62
Bond on Appeal of William P. Hopkins and I. A. Shaffer, Jr., Trustees.....	65
Certificate of Clerk U. S. District Court to Transcript of Record.....	180
Certificate of Referee on Review of Order Disallowing Petition for Reclamation of A. C. Hopkins Estate.....	3
Citation on Appeal.....	1
Decision and Order on Petition of A. C. Hopkins Estate for Reclamation.....	8
Decision and Order of Referee upon Petition of Hopkins Estate for Reclamation.....	53
EXHIBITS:	
Exhibit "A"—Statement.....	27
Exhibit "B"—Blank Form of the Repurchase Contract.....	28

Index.	Page
EXHIBITS—Continued:	
Claimant's Exhibit No. 1—Hopkins—Letter Dated December 10, 1920, Morris Brothers, Inc., to I. A. Shaffer, Jr.,..	129
Claimant's Exhibit No. 2—Hopkins—Letter Dated December 15, 1920, I. A. Shaffer, Jr., to Morris Brothers, Inc.	131
Claimant's Exhibit No. 3—Hopkins—Letter Dated December 20, 1920, Wm. P. Hopkins to Morris Brothers, Inc....	132
Claimant's Exhibit No. 4—Hopkins—Letter Dated January 5, 1921, Carey & Kerr to W. D. Whitcomb, Receiver..	133
Claimant's Exhibit No. 5—Hopkins—Letter Dated January 6, 1921 W. D. Whitcomb to Carey & Kerr.....	135
Claimant's Exhibit No. 6—Memoranda....	177
Trustee's Exhibit "A"—Hopkins—Letter Dated December 22, 1920, Morris Brothers, Inc., to Wm. P. Hopkins..	136
Names and Addresses of Attorneys of Record..	1
Opinion on Review of Order of Referee.....	31
Order Allowing Appeal of William P. Hopkins and I. A. Shaffer, Jr., as Trustees.....	64
Order Affirming Order of Referee and Denying Petition of Trustees of Hopkins Estate....	29
Order Granting Rehearing and Referring Petition to Referee.....	46

Index.	Page
Order of Court Affirming Order of Referee and Denying Petition of Trustees of A. C. Hopkins Estate.....	58
Petition for Appeal.....	59
Petition for Rehearing and Reopening Proceedings Upon Reclamation Claim of Trustees of Estate of A. C. Hopkins.....	34
Petition for Review of Referee's Order Disallowing Reclamation Claim of A. C. Hopkins Estate	5
Petition for Review of Referee's Order Disallowing on Rehearing Reclamation Claim of A. C. Hopkins Estate.....	49
Petition of Trustees of Hopkins Estate for Delivery of Property.....	19
Praecipe for Transcript of Record on Appeal of William P. Hopkins and I. A. Shaffer, Jr., Trustees	68
Referee's Certificate on Review Denying the Petition of A. C. Hopkins Estate for Reclamation	47
Stipulation in Reclamation Claim of Hopkins Estate	25
TESTIMONY ON BEHALF OF CLAIM-ANT:	
AGLER, ALICE Miss.....	74
Recalled	103
EDMUNDS, EARL EDWARD.....	105
Cross-examination	107

	Index.	Page
TESTIMONY ON BEHALF OF CLAIM-		
ANT—Continued:		
GLENN, FRED		85
On Rehearing		152
Cross-examination		163
GRANNING, Mrs.		108
Cross-examination		110
HOPKINS, WILLIAM P. (On Rehear-		
ing)		139
Cross-examination		143
Redirect Examination		148
Recross-examination		151
TAYLOR, A. L.....		81
Recalled		92
Recalled		101
Recalled		114
Cross-examination		120
WASHINGTON, GEORGE T.		90
Recalled		94

Names and Addresses of Attorneys of Record.

CAREY & KERR and CHARLES A. HART,
Yeon Building, Portland, Oregon,
For the Appellants.

JOHN P. WINTER, Title & Trust Building,
Portland, Oregon,
For the Appellee.

Citation on Appeal.

United States of America,
District of Oregon,—ss.

To E. C. Bonaugh, Trustee in Bankruptcy of Morris Bros., Inc., and to John P. Winter, Esq.,
His Attorney, GREETING:

WHEREAS, William P. Hopkins and I. A. Shaffer, Jr., Trustees, have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 23d day of November, in the year of our Lord, one thousand nine hundred and twenty-one.

R. S. BEAN,
Judge.

State of Oregon,
County of Multnomah,—ss.

Due service of the within Citation on Appeal is hereby accepted in Multnomah County, Oregon, this 23d day of November, 1921, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for appellants.

J. P. WINTER,
Attorney for Trustee in Bankruptcy. [1*]

[Endorsed]: No. B—5653. United States District Court, District of Oregon. In the Matter of Morris Brothers, Inc., a Corporation, Bankrupt. Citation on Appeal. U. S. District Court, District of Oregon. Filed Nov. 23, 1921, at — o'clock — M. G. H. Marsh, Clerk.

In the District Court of the United States for the
District of Oregon.

July Term, 1921.

BE IT REMEMBERED, That on the 19th day of July, 1921, there was received from the Referee in Bankruptcy and duly filed in the District Court

*Page-number appearing at foot of page of original certified Transcript of Record.

of the United States for the District of Oregon, a Certificate of the Referee in Bankruptcy for Review, in words and figures as follows, to wit: [2]

In the District Court of the United States for the
District of Oregon.

No. B-5653—IN BANKRUPT.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

**Certificate of Referee on Review of Order Dis-
allowing Petition for Reclamation of A. C.
Hopkins Estate.**

To the Honorable District Court Above Named:

The undersigned Referee in Bankruptcy before whom this cause is pending has the honor to certify that on the 14th day of July an order, copy of which is attached to the petition for review herein, was made and entered in the said cause denying the petition of the estate of A. C. Hopkins for reclamation of certain bonds therein described now in the possession of the trustee. Thereupon, on the 16th day of July, 1921, the said petitioner, being aggrieved at the order so made, filed his petition for review, which was allowed.

The issues are fully set up in the petition and the answer thereto, and the findings and conclusions of the undersigned are fully set forth in the order denying the petition, as well as the reasons therefor, so that the question arising upon this record

is whether or not said order was properly entered.

I transmit with this certificate the petition for reclamation, the answer, and all the exhibits and testimony adduced before me on the hearing of said matter.

Respectfully submitted this 19th day of July, 1921.

A. M. CANNON,
Referee in Bankruptcy.

Notice of the filing of the foregoing certificate mailed July 19, 1921, to J. P. Winter and Marion F. Dolph, attorneys for Trustee of bankrupt, and to C. A. Hart, attorney for claimants.

G. H. MARSH,
Clerk.

Filed July 19, 1921. G. H. Marsh, Clerk. [3]

AND AFTERWARDS, to wit, on the 19th day of July, 1921, there was received from the Referee in Bankruptcy and duly filed in said court a petition of the trustees of the A. C. Hopkins Estate for review of the order of the referee, in words and figures as follows, to wit: [4]

In the District Court of the United States for the
District of Oregon.

No. B-5653.

In the Matter of MORRIS BROTHERS, INC., a
Corporation, Bankrupt.

**Petition for Review of Referee's Order Disallowing
Reclamation Claim of A. C. Hopkins Estate.**

To A. M. Cannon, Esquire, Referee in Bankruptcy:

Your petitioners, William P. Hopkins and I. A. Shaffer, Jr., Trustees of the estate of A. C. Hopkins, respectfully show:

I.

Your petitioners claim to be the owners of the following described municipal bonds, and have heretofore filed in this proceeding their reclamation petition seeking to have an order made turning said property over to them:

Number and Description of Bonds.	Maturity.	Amount.
Nos. 9, 10, and 11 Rigby Independent School District No. 5..	1932	\$3,000.00
Nos. 13, 14, 15, 16, Rigby Independent School District No. 5..	1933	4,000.00
Nos. 17, 18, and 19, Rigby Independent School District No. 5..	1934	3,000.00
Nos. 273 to 278, inclusive, Nos. 280, 256, 257, and 269, Buhl Highway District, Twin Falls county	1935	10,000.00
Nos. 91, 92, 93, 94, and 95, Heyburn-Paul Highway District, Mindoka county	1934	5,000.00
Nos. 11, 12, and 13, Joint School District No. 6, Fremont and Madison counties	1935	3,000.00

Number and Description of Bonds.	Maturity.	Amount.
Nos. 14, 15, and 16, Joint School District No. 6, Fremont and [5] Madison counties	1936	3,000.00
Nos. 17, 18, and 19, Joint School District No. 6, Fremont and Madison counties	1937	3,000.00
Nos. 20, 21, and 22, Joint School District No. 6, Fremont and Madison counties	1938	3,000.00
Nos. 23, 24, and 25, Joint School District No. 6, Fremont and Madison counties	1939	3,000.00
Nos. 16, 17, and 18, Independent School District No. 1, Bonner County	1932	3,000.00
Nos. 24, 25, and 26, Independent School District No. 1, Bonner county	1933	3,000.00
Nos. 29, 30, 31, and 32, Inde- pendent School District No. 1, Bonner county	1934	4,000.00

II.

On July 14, 1921, an order was made and entered herein disallowing the claim of petitioners to said bonds. A copy of said order is hereto annexed.

III.

Said order was and is erroneous in holding and determining that said bonds are not the property of claimants, and in holding and determining that

the title to said bonds did not pass to claimants prior to the adjudication of bankruptcy herein and in disallowing the claim of claimants to said bonds.

WHEREFORE your petitioners pray that said order may be reviewed as provided in the bankruptcy law of 1898 and by General Order XXVII.

Dated, July 16, 1921.

WILLIAM P. HOPKINS and

I. A. SHAFFER, Jr.,

Trustees of the Estate of A. C. Hopkins.

By CAREY & KERR,

C. A. HART,

Their Attorneys. [6]

State of Oregon,

County of Multnomah,—ss.

I, Charles A. Hart, being first duly sworn, depose and say that I am one of the attorneys for the petitioners described in the foregoing petition. I further depose and say that the statements of fact therein contained are true according to the best of my knowledge, information, and belief.

I further depose and say that I make this verification on behalf of petitioners because neither of said petitioners is within the District of Oregon.

CHARLES A. HART.

Subscribed and sworn to before me this 16th day of July, 1921.

[Seal] ROBERT B. KUYKENDALL,

Notary Public for Oregon.

My commission expires September 1, 1924. [7]

In the District Court of the United States for the
District of Oregon.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

**Decision and Order on Petition of A. C. Hopkins
Estate for Reclamation.**

The petition under consideration is for the reclamation of \$50,000, par value, of bonds now in the possession of the trustee. The controversy results from the following occurrences:

Before the adjudication and on December 9, 1920, one of claimant's trustees called at the bankrupt's place of business and orally placed an order for the purchase of \$60,000 worth of bonds of various issues and denominations. Some of the bonds selected for purchase by claimant were then owned and in the possession of Morris Brothers, while it merely held re-purchase agreements as to others, the bonds having been pledged in various quarters by the bankrupt, and as to \$10,000 worth of Bay City bonds, these were not then in the possession of Morris Brothers, were not owned by them, and never came into their possession. This block of \$10,000 is not now involved. All of the bonds save the Bay City bonds were subsequently assembled by Morris Brothers and were on hand at the bond house available for delivery on the date of the failure.

On December 10, 1920, the day after the ten-

tative selection of the bonds by the Hopkins' representative, Morris Brothers wrote to the Trustee of the Hopkins Estate, at Lock Haven, Pennsylvania, as follows:

“Mr. William P. Hopkins was in yesterday and subject to your acquiescence on the purchase of said bonds, placed with us an order for the following: (Describing bonds minutely.)

The bonds above mentioned are to be delivered to you about December 23 or 24th, and we are to send the same, via registered mail, insured, addressed to the Estate of A. C. Hopkins, Lock Haven, Pennsylvania.” * * * [8]

On December 15, 1920, the trustee thus addressed answered as follows:

“Today we received your letter of December 10th, containing a list of the bonds, arrangements for the purchase of which my co-trustee, Mr. William Hopkins, made with you, subject to the writer's approval.

We have also received the descriptive circulars of the several bonds referred to, together with copies of the attorneys' opinions as to the legality of the various issues.

The writer, basing his conclusion upon the data above referred to, and the fact that Mr. Hopkins went over all these matters in person with your representative, believes the various bonds to be first class and desirable for the investment of trust funds.

You may therefore ship the bonds described in your letter to us, payment for which will be arranged by Mr. Hopkins."

On December 20, one of the trustees forwarded to Morris Brothers a check for \$61,000, "to apply on a purchase of municipal bonds made from you on December 9th." This check was received and entered on the bankrupt's books as a credit to the Hopkins Estate on account of said purchase.

The record shows that by December 24th the bankrupt had assembled all of the bonds save the Bay City's, had set them aside in an envelope with a rubber band about it, with the name of the Hopkins Estate written across the envelope, all apparently in preparation for delivery to the Hopkins Estate. [9]

This was the condition of affairs when the bond house closed its doors.

The question, and the only question, in my judgment, is, Where was the title to these bonds at the date of the failure? Was it in the Hopkins Estate or was it still in Morris Brothers? To state it the other way round, Was the sale completed, the bonds the property of the Hopkins Estate, Morris Brothers relieved of all risk, and the loss, if there had been one, shifted to the claimant?

The rules of law applicable to this transaction are not different from those that apply in the sale of ordinary chattels or articles of personal property. Delivery of an article from vendor to ven-

dee is a strong indication of intention to pass title. So is payment of the purchase price in full. So also is setting aside and marking of an article with the name of the buyer. But these various acts do not conclusively denote the ultimate intention. Payment in full may be made, but final acceptance and completion of the sale may depend upon inspection or other contingency. In a word, what the courts are concerned with is the true ascertainment of the intention of the parties as reflected by their contract, oral or written, as the case may be, and if this intention cannot otherwise be determined the canon most frequently resorted to is that of determining where the loss would fall in case of fire, theft, or other casualty.

In this case, that which is most strongly urged is that the two acts: Payment in full by the vendee to the vendor and the setting aside by the vendor in its place of business of the property under the name of the vendee, vested the property in the Hopkins Estate and closed the transaction. [10] This can be true only if thereby Morris Brothers fully completed and discharged all its obligations under the contract or was relieved therefrom by waiver on the part of the claimant.

The contract of sale existing between these parties is embodied in the two letters quoted above. There is no other. Hence, it must be ascertained therefrom what Morris Brothers was required to do before the sale was completed and the Hopkins

Estate vested with title to the bonds. This, is my opinion, narrows the whole inquiry to an examination of the question of where it was intended these bonds should be delivered. Was the place Portland, Oregon, or was it Lock Haven, Pennsylvania? If the former, then the petition must be allowed; if the latter, it must be denied.

If, by the contract the property was to be delivered by Morris Brothers at Lock Haven, it is easy to see that neither payment by the claimant before that event happened, nor segregation of the bonds by Morris Brothers at its place of business preparatory to making the delivery, nor the combination of these acts, would shift the title, because the Oregon law enacted in 1919, known as the Uniform Sales Law and embraced in sections 81 and 82 of Olson's Code, controls and it provides:

"If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or have reached the place agreed upon."

This provision is a statutory enactment of the common [11] law rule determining where the risk lies in case of loss in contracts for the sale of personal property, and the rule is thus well phrased in 24 Am. & Eng. Ency. of Law (2d ed.), page 1050:

“If by the terms of the contract the seller is required to send, or forward, or deliver the goods to the buyer, the title and risk remain in the seller until the transportation is at an end or the goods are delivered in accordance with the contract, after which time the title is vested in the buyer.”

Consequently, if Morris Brothers was required to deliver these chattels to the claimant at Lock Haven, Pennsylvania, the fact that claimant made payment before such delivery no more casts the title and risk upon it than would be the case in the purchase of a bill of common merchandise selected and paid for at a store, where it is agreed the seller shall deliver upon the latter's premises. Under the Oregon statute the title and risk in such case is not with the purchaser, but abides in the seller until he has completed the contract. The statute does not say that if the purchaser has made payment, the seller is relieved of his obligations to deliver, and I am not at liberty to read that into the statute.

If nothing appears to the contrary, the place of sale is ordinarily the place of delivery, but this readily yields to any terms in the contract which modify the rule. The proposal of Morris Brothers to the Hopkins Estate was: “The bonds above mentioned are to be delivered to you.” This was accepted by the Hopkins letter in terms as follows: “You may therefore ship the bonds described in your letter to us.” [12]

In *Mayo vs. Price*, 218 S. W. (Mo.), 932, plaintiff, a wholesaler at Caruthersville, Missouri, received an offer from the defendant to sell plaintiff two carloads of potatoes, by telegram, using this language:

“With shipment as quick as can get cars dollar twenty-seven delivered.”

The offer was accepted by the plaintiff and defendant having defaulted in the contract, plaintiff brought an action for damages. The Court thus construed the word “delivered”:

“We must overrule the contention that the contract does not require a delivery of the potatoes at Caruthersville. The plaintiff’s place of business was Caruthersville, and when defendant by telegram from St. Joseph, Missouri, offered to sell plaintiff two cars of potatoes at the named price delivered, there could be but one fair meaning to the offer and that is delivery at Caruthersville.”

And so in this case, Morris Brothers having proposed in its letter to deliver the bonds to the Hopkins Estate and the Estate having confirmed this by requesting that the bonds be shipped to it, agreed to the proposal and thereafter Morris Brothers was obliged to do exactly what it stipulated in this letter. This contract Morris Brothers did not complete and all risks in the premises were with it, at least until the bonds were insured and deposited in the registered mail, addressed as agreed upon, and very likely, I should say, the risk

was its until the bonds reached the Estate, upon the theory that the carrier was the agent of Morris Brothers until the property reached its destination and was delivered.

In all such cases the Courts hold the sale is not completed until delivery is made as agreed upon.
[13]

Thus, in the case of Winklemeyer Brewing Company vs. Kipp, 50 Pac. Rep.) (Kan.) 956, there was a contract for the sale of a shipment of liquors by the plaintiff, a resident of St. Louis, to one Saunders, a resident of the state of Kansas. According to the contract, the freight was to be paid by Winklemeyer. The decision of the Court is as follows:

“The contract of sale was therefore complete when Saunders mailed the letter or sent the telegram ordering a carload of liquor. The contract of sale is complete, but the sale is not. Something more remains to be done. The liquors must be separated and delivered to Saunders before the sale is completed. It is clear that the separation took place in St. Louis. The delivery is ordinarily made to the purchaser by delivery to the carrier. Where the purchaser is to pay the freight, the carrier is his agent. The illegality of the sale of intoxicating liquors frequently depends upon the place where the sale is made. This is governed by the place where the sale is completed by

delivery. Where the vendor is to and does pay the freight to the place of delivery, the place of delivery becomes the place of sale. If by the terms of the contract the seller is required to send or forward the goods to the buyer, the title and risk remain in the seller until the transportation is at an end, after which time the title is vested in the buyer."

Every step taken by Morris Brothers in this matter, as the record shows, indicates that it recognized an obligation [14] to deliver the bonds at Lock Haven. It was to pay the transportation charges, slight as they might have been, and the insurance was to be taken, not in favor of the Hopkins Estate, but in favor of Morris Brothers.

Under the authority of the Mayo case, *supra*, the language "we are to deliver these bonds to you" meant at Lock Haven, or at least to the carrier, in this instance, the United States mail, and the quoted language which follows that declaration certainly strengthens this interpretation and is a statement of the manner in which it is proposed to make the delivery.

The segregation so much relied upon, isolatedly considered, is of no importance, for it is manifest that Morris Brothers could not have maintained an action for the price merely because it set the bonds aside in its place of business, and if, after such segregation, they had been destroyed or stolen, is it reasonable to suppose that the bankrupt would have been accorded a remedy in any court in an action to recover their value against the estate in

such circumstances? Surely not, especially in the face of the statute mentioned.

The only importance that may attach to the act of segregation, as it appears to me, is that, taken in connection with payment in full by the claimant, it may furnish some foundation for the contention that thereafter Morris Brothers might be considered the agent of the claimant for making delivery of the bonds to the carrier. But this contention is swept aside by the contract to deliver at Lock Haven and the Oregon law above quoted which rules that property does not pass where the contract requires delivery to the buyer or [15] prepayment of cost of transportation, etc. Under this statute it is certain that Morris Brothers could not take the position as against the Hopkins Estate that it was Hopkins' agent, and if it could not, neither may the Hopkins Estate, for remedies must be mutual.

In all cases of this character in courts of bankruptcy, the petitioner has the burden and is required to show by clear and satisfactory proof that it is entitled to withdraw specific property from the estate as against the vital interests of the other creditors therein, and if there is reasonable doubt about this right, it must be resolved against petitioner.

It is my opinion that the petitioner herein has not sustained this burden, and for the reasons stated its petition to reclaim must be disallowed, and it will be allowed a general claim against the estate.

A. M. CANNON,
Referee.

State of Oregon,
County of Multnomah,—ss.

Due service of the within petition is hereby accepted in Multnomah county, Oregon, this 16th day of July, 1921, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for petitioners.

JOHN P. WINTER,
By W. G. SMITH,
Attorney for Trustee.

Filed July 16, 1921. A. M. Cannon, Referee.
Allowed July 19, 1921. A. M. Cannon, Referee.
Filed July 19, 1921. G. H. Marsh, Clerk. [16]

AND AFTERWARDS, to wit, on the 19th day of July, 1921, there was received from the Referee in Bankruptcy and duly filed in said court petition of the trustees of the A. C. Hopkins Estate for the delivery to them of the property described in said petition, in words and figures as follows, to wit: [17]

In the District Court of the United States for the
District of Oregon.

IN BANKRUPTCY—No. B-5653.

In the Matter of MORRIS BROTHES, INCORPORATED, a Corporation,
Bankrupt.

Petition of Trustees of Hopkins Estate for Delivery of Property.

To the District Court of the United States for the District of Oregon:

The petition of William P. Hopkins and I. A. Shaffer, Jr., Trustees of the estate of A. C. Hopkins, respectfully shows:

I.

Your petitioners are the duly qualified and acting trustees of the estate of A. C. Hopkins.

II.

Petitioners are the owners and entitled to the immediate possession of the following described personal property:

Bay City 6% bonds, due 1934.....	\$10,000.00
Bonner county, Idaho, Independent	
School District No. 1 bonds, due	3,000.00
1932	3,000.00
Bonner county, Idaho, Independent	
School District No. 1 bonds, due	
1933.....	3,000.00
Bonner county, Idaho, Independent	
School District No. 1 bonds, due	
1934.....	4,000.00
Fremont and Madison counties, Idaho,	
Joint School District No. 8 bonds,	
due 1935.....	3,000.00
Fremont and Madison counties, Idaho,	
Joint School District No. 8 bonds,	
due 1936.....	3,000.00

Fremont and Madison counties, Idaho, Joint School District No. 8 bonds, due 1937.....	3,000.00
[18]	
Fremont and Madison counties, Idaho, Joint School District No. 8 bonds, due 1938.....	\$3,000.00
Fremont and Madison counties, Idaho, Joint School District No. 8 bonds, due 1939.....	3,000.00
Heyburn-Paul Highway District, Min- doka county, Idaho, due 1934.....	5,000.00
Rigby Independent School District No. 5, Jefferson county, Idaho, due 1932..	3,000.00
Rigby Independent School District No. 5, Jefferson county, Idaho, due 1933..	4,000.00
Rigby Independent School District No. 5, Jefferson county, Idaho, due 1934..	3,000.00
Buhl Highway District Twin Falls county, Idaho, due 1935.....	10,000.00

III.

Petitioners on or about the 9th day of December, 1920, contracted with Morris Brothers, Incorporated, the above-named bankrupt, for the purchase from it by petitioners of the bonds hereinabove described. Subsequently and on December 15, 1920, the purchase was consummated and on or about December 20, 1920, petitioners paid to Morris Brothers, Incorporated, the sum of Sixty-one thousand dollars (\$61,000.00) for the purpose of having the same applied in satisfaction of

the purchase price of the bonds described. Thereafter, as petitioners are informed and believe, said bonds were secured by the bankrupt from its office at San Francisco and elsewhere, and said bonds were segregated and appropriated to the purchase so made by petitioners and became and were petitioners' property; and at and immediately prior to the adjudication herein, the said [19] bankrupt had prepared to make delivery and was about to make delivery to petitioners of the bonds so purchased by them.

IV.

Heretofore and before the filing of this petition, due demand was made by your petitioners upon E. C. Bronaugh, Esquire, Trustee, that he deliver possession of said property, but delivery has not been made.

WHEREFORE, petitioners respectfully pray that E. C. Bronaugh, Esquire, as trustee herein, be directed to deliver to your petitioners the said property hereinabove listed.

Dated March 9, 1921.

WILLIAM P. HOPKINS,

I. A. SHAFFER, Jr.,

Trustees of the Estate of A. C. Hopkins.

By CAREY & KERR,

C. A. HART,

Their Attorneys.

Filed March 21, 1920. A. M. Cannon, Referee.
Filed July 19, 1921. G. H. Marsh, Clerk. [20]

AND AFTERWARDS, to wit, on the 19th day of July, 1921, there was received from the Referee in Bankruptcy and duly filed in said court an answer of the Trustee in Bankruptcy to the petition of the trustees of the A. C. Hopkins Estate, in words and figures as follows, to wit: [21]

In the District Court of the United States for the
District of Oregon.

B-5653.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

**Answer in Reclamation of the Petition of William
P. Hopkins and I. A. Shaffer, Jr., Trustees of
the Estate of A. C. Hopkins.**

Earl C. Bronaugh, as Trustee in Bankruptcy of the estate of the above-named bankrupt, answering the petition of the claimants herein, shows and alleges upon information and belief:

I.

Admits paragraph I of plaintiff's petition.

II.

Denies paragraph II of plaintiff's petition.

III.

Denies paragraph III of plaintiff's petition, excepting that the Trustee admits that petitioners, on or about the 9th day of December, 1920, contracted with Morris Brothers, incorporated, the

above-named bankrupt, for the purchase from said bankrupt by petitioners of the bonds in said petition described, and the Trustee admits that the sum of \$61,000.00 was paid to the bankrupt on account of said purchase.

IV.

Admits paragraph IV of plaintiff's petition.

The Trustee, further answering said petition, and for a further and separate defense thereto alleges:

I.

That all the bonds described and set out in plaintiff's petition came into the possession of the Trustee with the exception of \$10,000.00 Port of Bay City, Oregon, six per cent bonds, and that said Port of Bay City, Oregon, six per [22] cent bonds were never purchased by or delivered to Morris Brothers, Inc., and that all of said bonds described and set out in plaintiff's petition are now in the possession of the Trustee, excepting said \$10,000.00 Port of Bay City, Oregon, six per cent bonds.

II.

That Morris Brothers, Inc., the bankrupt, never delivered said bonds described and set out in plaintiff's petition to the petitioners, or anyone else on their behalf, and that said bonds with the exception of said \$10,000.00 Port of Bay City, Oregon, six per cent bonds came into and are now in the possession of the Trustee, and are a part of the assets of said bankrupt estate, and that the petitioners are not entitled to the delivery of said bonds from

the Trustee, but stand only in the relation of creditors of Morris Brothers, Inc., the bankrupt herein.

Wherefore, the Trustee demands judgment, dismissing the petition of the claimants herein.

EARL C. BRONAUGH,

As Trustee in Bankruptcy of Morris Brothers, Inc.,
309 Stark Street, Portland, Oregon.

JOHN P. WINTER and

M. F. DOLPH,

Attorneys for Trustee.

United States of America,
District and State of Oregon,
County of Multnomah,—ss.

I, Earl C. Bronaugh, being first duly sworn, depose and say that I am the duly elected Trustee of the above-entitled bankrupt estate; that I have read the foregoing answer to the petition, and that the statements contained therein are true, according to the best of my knowledge, information and belief.

EARL C. BRONAUGH. [23]

Subscribed and sworn to before me this 1st day of April, 1921.

[Seal]

MARION F. DOLPH,

Notary Public for the State of Oregon.

My commission expires May 26, 1924.

District of Oregon,
County of Multnomah,—ss.

Due service of the within answer is hereby accepted in Multnomah county, Oregon, this 1st day of April, 1921, by receiving a copy thereof, duly

certified to as such by M. F. Dolph, of attorneys for trustee.

CHARLES A. HART,
Attorneys for Petitioner.

Filed April 1, 1921. A. M. Cannon, Referee in Bankruptcy—Oregon. Filed July 19, 1921. C. H. Marsh, Clerk. [24]

AND AFTERWARDS, to wit, on the 19th day of July, 1921, there was received from the Referee in Bankruptcy and duly filed in said court a stipulation as to the evidence, in words and figures as follows, to wit: [25]

In the District Court of the United States for the District of Oregon.

No. B-5653—IN BANKRUPTCY.

In the Matter of MORRIS BROTHERS, INC., a Corporation, Bankrupt.

Stipulation in Reclamation Claim of Hopkins Estate.

The parties stipulate that the statement hereto annexed, marked Exhibit "A" is a true and correct statement of the facts concerning the municipal bonds covered by the transaction initiated December 9, 1920, by one of the Trustees of the Hopkins Estate with Morris Brothers, Incorporated. All of the bonds described in this statement which on December 9, 1920, were in the possession of the National Bank of Commerce of Seattle, were covered

by a so-called repurchase agreement, the form of which is indicated by the document annexed hereto and marked Exhibit "B." All of such bonds were secured by Morris Brothers from the National Bank of Commerce on December 17, 1920, and were thereupon set apart in a separate container included in a package marked with the name of the Hopkins Estate.

The \$8,000.00 of Buhl Highway bonds which were in the possession of the Central National Bank of Oakland were under hypothecation to secure loans. These bonds were returned to Morris Brothers December 22, 1920, and were thereupon placed with the Hopkins package of bonds hereinabove referred to. The \$5,000.00 of Bonner County School District bonds in the possession of the United States National Bank of Portland were under hypothecation and were returned to Morris Brothers December 14, 1920, and were thereupon placed in said package in said separate container.

Dated this 5th day of May, 1921.

CAREY & KERR,

C. A. HART,

Attorneys for Petitioner.

J. P. WINTER,

Attorney for Trustee in Bankruptcy. [26]

Exhibit "A."

Description of Bonds	Maturity	Owned December 9, 1920		Contract of Purchase	Location	December 9		Segregation Date
		Nos.	Amount			Nos.		
Highby Ind. S. D. #5	1932	9-10-11-12	\$4000	\$3000.00	National Bk. Comm.	9-10-11	Dec. 17-20	
	1933	13-14-15-16	4000	4000.00	do	13-14-15-16	do	
	1934	17-18-19-20	4000	3000.00	do	17-18-19	do	
Buhl Highway Dist. Win Falls County	1935	273-8			273-8 & 237	273-8, 280	Dec. 22-20	
		280, 256, 257	12000	10000.00	Nat'l Bk. Oakland	256-7, 269	Dec. 17-20	
		267			256-7 National Bank			
		and 2 others			Commerce, Seattle			
Tinnidoka Co. Teyburn-Paul Dist.	1934	91-2-3-4-5	5000	5000.00	92-5 in stock	91-2-3-4-5-92-5	12-10-20	
					91 in National Bank	-91	12-17-20	
					Commerce, Seattle			
					In stock			
Yeremont & Madison Joint S. D. #8	1935	11-12-13	3000	3000.00		11-12-13	12-10-20	
	1936	14-15-16	3000	3000.00	" "	14-15-16	12-10-20	
	1937	17-18-19	3000	3000.00	" "	17-18-19	12-10-20	
	1938	20-21-22	3000	3000.00	" "	20-21-22	12-10-20	
Bonner Co. nd. S. D. #1	1939	23-24-25	3000	3000.00	" "	23-24-25	12-10-20	
	1932	16-17-18-19	4000	3000.00	U. S. National Bank	16-17-18	12-14-20	
					Portland			
	1933	24-25-26	3000	3000.00	24-25 U. S. Nat. Bk. Portland	24-25	12-14-20	
Port of Bay City	1934	29-30-21-32	4000	4000	Nat. Bank Commerce	29-30-31-32	12-17-20	
	1934	None owned and none secured prior to December 24, 1920.			Seattle			

Exhibit "B."

Seattle, Washington, —.

For and in consideration of the purchase this day from us at the sum of \$—— by the National Bank of Commerce of those certain securities numbered —— of the face value of \$——, bearing date of the —— day of ——, made by —— payable to the order of ——, we hereby jointly and severally guarantee the payment of the entire principal and interest of said securities and each of them according to the terms thereof. The bank shall not be bound to exhaust its resource or to make any demand or to take any action whatever against any party thereon before being entitled to payment from the undersigned and each of them of the amount hereby guaranteed, but may, at its option, make such demands and take such action for the purpose of securing payment thereof as may to the bank seem advisable. We jointly and severally agree to remain bound notwithstanding any extensions or renewals of said securities, or any of them, and consent is hereby given to any such extensions or renewals as the bank may at its option choose to grant or accept. We further jointly and severally agree to repurchase said securities, or such of them as the bank may from time to time desire us to repurchase at any time hereafter, upon demand of said bank, and to pay therefor the sum of \$—— for each of said \$—— [28] so repurchased, with interest thereon at the rate of —— per centum per annum from this date until date of purchase, less,

however, any interest meanwhile collected by said bank on said security so repurchased. Notice of default on the part of any party to any of said securities is hereby waived.

MORRIS BROTHERS, INC.,

By _____.

Dated _____.

Filed July 12, 1921, A. M. Cannon, Referee.

Filed July 19, 1921. G. H. Marsh, Clerk. [29]

AND AFTERWARDS, to wit, on the 8th day of August, 1921, there was duly filed in said court an order of the Court affirming the order of the Referee in Bankruptcy and denying the petition of the trustees of the A. C. Hopkins Estate, in words and figures as follows, to wit:
[30]

In the District Court of the United States for the District of Oregon.

No. B-5653.

August 8, 1921.

In the Matter of MORRIS BROTHERS, Bankrupt.

**Order Affirming Order of Referee and Denying
Petition of Trustees of Hopkins Estate.**

This cause was heard by the Court upon review of the order of H. M. Cannon, Referee in Bankruptcy herein, denying the petition of the trustees of the estate of A. C. Hopkins for an order direct-

ing the trustee of the estate of the above-named bankrupt to deliver to them certain bonds described in said petition; the said trustees of the estate of A. C. Hopkins appearing by Mr. Charles A. Hart, of counsel, and the trustee of the estate of the above-named bankrupt appearing by Mr. John P. Winter, of counsel;

On consideration whereof, IT IS NOW ORDERED AND ADJUDGED, that the order of the said Referee, denying the petition of the trustees of the estate of A. C. Hopkins, be, and the same is hereby, affirmed, and it is further ordered that the petition of the trustees of the estate of said A. C. Hopkins for the delivery to them by the trustee of the estate of the above-named bankrupt of the bonds described in the said petition be, and the same is hereby, denied.

R. S. BEAN,
Judge.

Filed August 8, 1921. G. H. Marsh, Clerk. [31]

AND AFTERWARDS, to wit, on the 8th day of August, 1921, there was duly filed in said court an opinion of the Court on review of the order of the Referee in Bankruptcy, in words and figures as follows, to wit: [32]

In the District Court of the United States for the
District of Oregon.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

Opinion on Review of Order of Referee.

MEMORANDUM by BEAN, District Judge:

On Petition for Review of Ruling of the Referee on Application of Estate of A. C. Hopkins, of Lockhaven, Pennsylvania, for an Order Requiring the Trustee to Deliver to It Certain Bonds.

The facts are not in dispute. On December 9, 1920, Mr. Hopkins, one of the trustees of the petitioner, called at the place of business of the bankrupt in Portland and after examining bonds listed by it for sale placed an order for sixty thousand dollars worth of various municipal bonds, subject to the approval of his co-trustee, Mr. Schaffer, who resides at Lockhaven. The next day the bankrupt wrote to Mr. Schaffer advising him that Hopkins had, subject to his approval, placed an order for bonds of various municipalities, giving the amounts, rate of interest, date of maturity, and price, without, however, specifying any particular **bond or** bonds, and saying that "the bonds above mentioned are to be delivered to about December 23d or 24th, and we are to send the same via registered mail, insured, addressed to the Estate of A. C. Hopkins, Lockhaven, Penn." On December 15th, Mr. Schaffer acknowledged receipt of the letter, approved the purchase, and directed that the bonds be "shipped to us, payment for which will be arranged by Mr. Hopkins." A few days later the

bankrupt received a letter from the petitioner enclosing a check for \$61,000.000, "to apply on [33] a purchase of municipal bonds made from you on December 9th," and requesting that the bonds be sent to Mr. Schaffer as agent of the Hopkins Estate at Lockhaven, Pennsylvania.

At the time the order was received and approved, bonds answering the description contained in the bankrupt's letter of December 10, amounting to nineteen thousand dollars, were then owned and in the possession of the bankrupt and were all of such issues owned by it. Others were hypothecated in various quarters, and ten thousand dollars of the bonds agreed to be sold were not owned by the bankrupt and never came into its possession.

Immediately upon receipt of the order, the bankrupt began to assemble bonds to fill it and by the 24th of December fifty thousand dollars in bonds answering the description contained in the letter of December 10 had been assembled and put in an envelope, and the name "Hopkins Estate" written across it, preparatory to forwarding the bonds to the purchaser at Lockhaven, Pennsylvania. Before the shipment was made, bankruptcy ensued.

The question for decision, therefore, is: Did the title to the particular bonds which had been set aside and placed in a separate container by the bankrupt pass to the petitioner or remain with the bankrupt?

Many authorities have been referred to and examined as bearing upon the question, but it is

unnecessary to cite or refer to them in detail, for the question is primarily one of intention, to be determined by the terms of the contract and the circumstances surrounding the transaction. The contract is contained in the letter of the bankrupt to Mr. Schaffer of December 10, and his reply thereto. In the former, it is [34] stated that the bonds are to be forwarded by registered mail to the purchaser at Lockhaven, Pennsylvania, and in the latter that they "are to be shipped to us."

It is therefore quite clear that it was the intention of the parties that the bonds were to be forwarded by the seller by registered mail to the buyer at Lockhaven, Pennsylvania, and in my judgment the title would not pass until this condition was complied with. (See Rule 5, section 8182, Olson's Oregon Laws.)

It is to be observed the contract was not for the sale and purchase of certain specific bonds, but only of bonds of certain issues, denomination, maturity, and rate of interest. The delivery by the seller of any bonds, whether then owned or afterward acquired, answering this general description, would have been a compliance with the contract. The selection by the seller of the particular bonds which it intended to deliver under the contract was not irrevocable. Notwithstanding such selection, it could thereafter have substituted others of like kind. All the buyer could demand was that when the time for performance arrived, bonds of the

description and quality specified in the contract should be delivered.

It follows that the order of the referee should be affirmed, and it is so ordered.

Filed August 8, 1921. G. H. Marsh, Clerk. [35]

AND AFTERWARDS, to wit, on the 17th day of August, 1921, there was duly filed in said court a Petition of the Trustees of the A. C. Hopkins Estate for a rehearing, in words and figures as follows, to wit: [36]

In the District Court of the United States for the District of Oregon.

No. B-5653.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

**Petition for Rehearing and Reopening Proceedings
Upon Reclamation Claim of Trustees of Estate
of A. C. Hopkins.**

Now come William P. Hopkins and I. A. Shaffer, Jr., trustees of the estate of A. C. Hopkins, and petition the Court for a rehearing upon the petition of the undersigned trustees for a review of the ruling of the Referee in Bankruptcy herein denying said trustees' reclamation petition for the delivery of certain bonds; and petitioners further pray that upon such rehearing leave be granted to

take additional testimony in support of petitioners' reclamation petition.

This petition is based upon the record herein and upon the accompanying affidavits of Charles A. Hart, William P. Hopkins, and Fred S. Glenn.

Dated this 15th day of August, 1921.

CAREY & KERR,

C. A. HART,

Attorneys for Petitioners. [37]

In the District Court of the United States for the
District of Oregon.

No. B-5653.

In the Matter of MORRIS BROTHERS, INCOR-
PORATED,

Bankrupt.

Affidavit of Charles A. Hart.

State of Oregon,

County of Multnomah,—ss.

I, Charles A. Hart, being duly sworn, depose and say that I am one of the attorneys representing the Trustees of the Estate of A. C. Hopkins in the proceedings relating to the reclamation of certain bonds in possession of the Trustee in Bankruptcy of Morris Brothers, Incorporated.

I further depose and say:

Petitioners' reclamation petition was filed with the Referee in Bankruptcy in the matter of Morris Brothers, Incorporated, Bankrupt, in March, 1921. Thereafter the Trustee in Bankruptcy filed his an-

swer and a hearing before the Referee in Bankruptcy was had during the month of April, 1921. At the conclusion of the hearing petitioners filed their brief with the Referee in Bankruptcy and thereafter and subsequent to June 1, 1921, an answering brief was filed by the Trustee in Bankruptcy.

The petitioners in said reclamation proceeding, and affiant as their attorney, were not advised until the time when the brief of the Trustee in Bankruptcy was filed, of the position taken by the Trustee in defense of petitioners' claim. Neither the answer of the Trustee in Bankruptcy nor any of the proceedings during the hearing before the Referee disclosed that the Trustee in Bankruptcy intended to rely upon the claim that Morris Brothers in making a contract of [38] sale of the bonds claimed to petitioners prior to bankruptcy obligated itself to make delivery of the bonds sold to petitioners at Lockhaven, Pennsylvania.

For this reason affiant offered no testimony during the hearing before the referee to show what, if any, conversation was had or what, if any, arrangement was made between the parties concerning the delivery of the bonds purchased. The day following the making of the tentative purchase contract between William P. Hopkins, one of the petitioners, and Fred S. Glenn, Vice-president of Morris Brothers, Incorporated, said Glenn reported the transaction by letter to I. A. Shaffer, Jr., co-trustee of said William P. Hopkins, but no copy of said

letter was sent to William P. Hopkins, and said letter was not a reduction of the oral contract theretofore made to writing.

At the time of the hearing before the Referee, petitioners introduced the testimony of Fred S. Glenn on other matters than the question of delivery, and because the defense based upon an alleged obligation to deliver had not then been made, the witness Glenn was not questioned regarding delivery nor was the petitioner, William P. Hopkins (who made the purchase) examined as a witness on any subject.

For these reasons the petitioners had no opportunity of submitting evidence on the question of whether or not the contract of purchase so made between petitioner, William P. Hopkins, and Fred S. Glenn, Vice-president of Morris Brothers, Incorporated included any obligation to make delivery of the bonds at Lockhaven, Pennsylvania.

Affiant is informed and believes that petitioner, William P. Hopkins, and said Fred S. Glenn, if called and sworn as witnesses in these proceedings, will testify that the contract of purchase so made included no obligation whatsoever on the part of Morris Brothers, Incorporated, to make delivery [39] of the bonds at any time or place, but, on the contrary, that the statement made in the letter dated December 10, 1920, from Fred S. Glenn to I. A. Shaffer, Jr., referred to directions given by petitioner, William P. Hopkins, at the conclusion of the oral arrangement for the purchase of the bonds, which directions were as follows, to wit:

When petitioner, William P. Hopkins, called upon said Fred S. Glenn on December 9, 1920, said Fred S. Glenn exhibited to said Hopkins the listings of Morris Brothers, Incorporated, comprising bonds then claimed to be owned and for sale by Morris Brothers, Incorporated. After said Hopkins had made his selection of bonds which, subject to the approval of his co-trustee, he desired to purchase, said Hopkins stated to said Glenn that the Hopkins Estate would not have its money ready or be prepared to take up the bonds purchased until about the 23d day of December, 1920. Said Hopkins further stated that the Hopkins Estate expected to receive a payment of sufficient funds on or about the date specified and that he, Hopkins, upon receipt of the money, would at once forward a check to Morris Brothers, Incorporated, to take up the bonds. Said Hopkins further stated that when the bonds were so paid for and taken up, they were to be mailed to the office of the Hopkins Estate at Lockhaven, Pennsylvania.

This affidavit is made in support of petitioners' application for rehearing and for a reopening of their reclamation claim.

CHARLES A. HART.

Subscribed and sworn to before me this 15th day of August, 1921.

[Seal]

ROBERT B. KUYKENDALL,

Notary Public for Oregon.

My commission expires September 1, 1924. [40]

In the District Court of the United States for the
District of Oregon.

No. B-5653.

In the Matter of MORRIS BROTHERS, INCOR-
PORATED, a Corporation,
Bankrupt.

Affidavit of William P. Hopkins.

State of Idaho,
County of Kootenai,—ss.

I, William P. Hopkins, being first duly sworn,
depose and say:

I am one of the Trustees of the Estate of A. C. Hopkins, and am the representative of that estate who negotiated with Fred S. Glenn on December 9, 1920, for the purchase of certain bonds from Morris Brothers, Incorporated.

I further depose and say:

I went to Portland, Oregon, on December 9, 1920, for the purpose of going over the bonds then being offered for sale by Morris Brothers, Incorporated. I was referred to Mr. Fred S. Glenn and he spent a considerable time going over with me the bonds then listed by Morris Brothers and offered for sale. All of the bonds discussed at that time and all of the bonds selected by me and purchased (subject to the approval of my co-trustee, I. A. Shaffer, Jr.) were, as I was informed and believe, bonds then owned and for sale by Morris Brothers. I was not advised at any time that any of the bonds which

I selected were not in the possession of Morris Brothers or in stock; nor did Mr. Glenn or any representative of Morris Brothers inform me that the particular maturities of Bay City bonds which I desired were not then among the Bay City bonds owned by or in the possession of Morris Brothers, Incorporated. [41]

After examining the listings and discussing the bonds with Mr. Glenn, I advised him of the particular bonds which I would purchase subject to the approval of my co-trustee, I. A. Shaffer, Jr. I further informed him that I was certain that Mr. Shaffer would approve the purchase and directed him at once to forward all information about the bonds to Mr. Shaffer.

After the purchase had been thus made on December 9, 1920 (subject to the approval of my co-trustee, as aforesaid), I stated to Mr. Glenn that the Hopkins Estate would not be prepared to pay for the bonds or to take them up until about December 23, 1920. I further stated to Mr. Glenn that the Hopkins Estate expected to receive a payment of a substantial sum on or about the date named, and that when said payment came in, I would at once forward to Morris Brothers, Incorporated, a check for the full amount of the purchase price. I further stated to Mr. Glenn that when the bonds had thus been paid for and taken up, I desired to have them mailed to the office of the Hopkins Estate at Lockhaven, Pennsylvania.

Nothing further on the subject of delivery of the

bonds was said at the time the purchase was made on December 9, 1920. The manner of transmitting the bonds and their protection during transit was not mentioned and there was no statement made at any time with respect to any obligation on the part of Morris Brothers, Incorporated, to effect delivery of the bonds at Lockhaven, Pennsylvania. Subsequent to the bankruptcy, I was furnished with a copy of Mr. Glenn's letter to Mr. Shaffer, dated December 10, 1920. The reference therein to delivery on December 23 or 24 related, so far as I understood the negotiations of the day before with Mr. Glenn, to my statement [42] to him that the Hopkins Estate would not be prepared to pay for or take up the bonds until the day named; and the reference in said letter to the shipment of the bonds registered and insured to the Hopkins Estate at Lockhaven, Pennsylvania, related to the direction given by me to Mr. Glenn to the effect that when the bonds were so paid for and taken up, I desired to have them mailed to the office of the Hopkins Estate at Lockhaven, Pennsylvania.

No other representative of the Hopkins Estate participated in any way in the making of the purchase of these bonds, and there was never any agreement or understanding or condition of purchase that Morris Brothers should make delivery of the bonds purchased at Lockhaven, Pennsylvania. I informed Mr. Glenn that I would take up the bonds by payment of the purchase price on or about December 23 or 24, and that I then desired to have

them mailed to the office of the Estate at Lockhaven, Pennsylvania. This direction comprises all that was said on the subject of delivery of the bonds, and was the only direction given by me to Mr. Glenn on the subject.

WILLIAM P. HOPKINS.

Subscribed and sworn to before me this 14th day of August, 1921.

EDWARD H. BERG,
Notary Public for Idaho, Residing at Coeur d'Alene,
Idaho.

My commission expires May 17, 1923. [43]

In the District Court of the United States for the
District of Oregon.

No. B-5653.

In the Matter of MORRIS BROTHERS, INCOR-
PORATED,

Bankrupt.

Affidavit of Fred Glenn.

State of Oregon,
County of Multnomah,—ss.

I, Fred Glenn, being first duly sworn, depose and say:

On and prior to December 9, 1920, I was in the employ of Morris Brothers, Incorporated, and was the representative of that company who negotiated a sale of certain bonds to the Estate of A. C. Hopkins, represented by William P. Hopkins, of Spokane, Washington, on December 9, 1920. I also wrote

on behalf of Morris Brothers, Incorporated, a letter, dated December 10, 1920, addressed to I. A. Shaffer, Jr., which is claimants' Exhibit 1 in the reclamation proceedings of the Trustees of the Hopkins Estate in the bankruptcy proceedings of Morris Brothers, Incorporated.

When the sale of the bonds referred to was negotiated with Mr. William P. Hopkins on December 9, 1920, I discussed with Mr. Hopkins each of the bond issues in which he was interested. All of the bonds which were included in the contract of purchase were among the listings of Morris Brothers, Incorporated, and were then being offered for sale. I was not advised at the time as to which of the bonds were then in stock and which of them were hypothecated with different banks, but all of the bonds were included in the listings then on sale by Morris Brothers, Incorporated; excepting that the particular maturities of Bay City bonds desired by Mr. Hopkins were not owned at the time by Morris [44] Brothers. I did not advise Mr. Hopkins of this fact because Morris Brothers, Incorporated, then had a contract with the Port of Bay City under the terms of which the maturities desired could readily be secured. When Mr. Hopkins concluded his selection of the bonds desired, he stated that he was certain there was no doubt that his cotrustee would approve the purchase, but that he desired to secure such approval before the purchase should become absolute; and he thereupon requested me to forward all papers con-

cerning the different bond issues to the cotrustee, Mr. Shaffer, at Lockhaven, Pennsylvania.

After Mr. Hopkins' selection of bonds had been made and after directions were given to me to forward information about the bonds to Mr. Shaffer, Mr. Hopkins stated that the Hopkins Estate would not be prepared to pay for the bonds and take them up until about December 23, 1920. He stated further that the estate expected to receive a payment in a substantial amount on or about that date and that when it was received, he would forward at once a check for the total amount of the purchase price, so that the bonds could be taken up at that time. He further stated that when the bonds were so paid for and taken up, he desired that they should be mailed to his cotrustee, Mr. Shaffer, at Lockhaven, Pennsylvania.

These directions, so far as I can recall, were the only ones given and they cover all that was said concerning the taking up of the bonds and what was to be done with them after they were paid for. In writing the cotrustee, Mr. Shaffer, on December 10, 1920, I referred to these directions and stated that delivery was to be made about December 23 or [45] 24, which was the date given me by Mr. Hopkins as the time when payment would likely be made. I further stated in my letter to Mr. Shaffer that the bonds would be sent registered and insured, and this statement regarding registering and insurance was made because of the fact that the practice of registering and insuring bonds was invariably fol-

lowed by Morris Brothers whenever bonds were mailed to a customer.

FRED GLENN.

Subscribed and sworn to before me this 15th day of August, 1921.

[Seal]

MARVIN K. HOLLAND,

Notary Public for Oregon.

My commission expires September 12, 1923.

State of Oregon,

County of Multnomah,—ss.

Due service of the within petition for rehearing, etc., is hereby accepted in Multnomah county, Oregon, this 17th day of August, 1921, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for petitioners.

M. F. DOLPH,

Of Attorneys for Trustee in Bankruptcy.

Filed August 17, 1921. G. H. Marsh, Clerk. [46]

AND AFTERWARDS, to wit, on the 29th day of August, 1921, there was duly filed in said court an order of the Court granting a rehearing on the petition of the trustees of the A. C. Hopkins Estate and referring the petition to the Referee in Bankruptcy for further proceedings, in words and figures as follows, to wit: [47]

In the District Court of the United States for the
District of Oregon.

No. B-5653.

August 29, 1921.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

**Order Granting Rehearing and Referring Petition
to Referee.**

The Court having considered the petition for rehearing filed by the trustees of the A. C. Hopkins Estate and being fully advised, it is ORDERED that the order heretofore on August 8, 1921, entered herein, denying the petition of the trustees of the said A. C. Hopkins Estate, be and the same is hereby vacated and set aside and that a rehearing be granted upon the said petition; and it is further ordered that the said petition be re-referred to A. M. Cannon, Referee in Bankruptcy, as a special master, to take such further testimony as may be offered by any of the parties to the said petition, and that he report said testimony together with his findings to this Court.

R. S. BEAN,
Judge.

Filed August 29, 1921. G. H. Marsh. Clerk. [48]

AND AFTERWARDS, to wit, on the 26th day of October, 1921, there was received from the Referee in Bankruptcy and duly filed in said court, certificate of the Referee in Bankruptcy for review of the order of the Referee, in words and figures as follows, to wit: [49]

In the District Court of the United States for the
District of Oregon.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

**Referee's Certificate on Review Denying the
Petition of A. C. Hopkins Estate for
Reclamation.**

The undersigned Referee in Bankruptcy, having considered the petition for reclamation of A. C. Hopkins Estate upon the testimony heretofore adduced and upon the additional testimony adduced under the order of this Court setting aside the order heretofore entered herein disallowing said petition, has the honor to certify that on the 18th day of October, 1921, an order was made and entered by the undersigned again disallowing said petition for the reasons stated in the order.

The petitioner thereupon, being aggrieved at the order so made, filed its petition for review on October 22, 1921, which petition was duly allowed, and the question now for decision is whether the

order, copy of which is attached to the petition for review, was properly made and is correct in law.

I hand up with this certificate the petition for review, the original testimony and exhibits and also the supplementary testimony and exhibits taken and filed in this cause.

Dated, October 26, 1921.

A. M. CANNON,

Referee in Bankruptcy.

Notice of the filing of the above certificate mailed October 26, 1921, to C. A. Hart and to John M. Winter.

G. H. MARSH,

Clerk.

Filed October 26, 1921. G. H. Marsh, Clerk. [50]

AND AFTERWARDS, to wit, on the 26th day of October, 1921, there was received from the Referee in Bankruptcy and duly filed in said court a petition of the trustees of the A. C. Hopkins estate for review of the order of the Referee in Bankruptcy, in words and figures as follows, to wit: [51]

In the District Court of the United States for the
District of Oregon.

IN BANKRUPTCY—No. B-5653.

In the Matter of MORRIS BROTHERS, INC.,
a Corporation, Bankrupt.

**Petition for Review of Referee's Order Disallowing
on Rehearing Reclamation Claim of A. C.
Hopkins Estate.**

To A. M. CANNON, Esquire, Referee in Bank-
ruptcy:

Your petitioners, William P. Hopkins and I. A.
Shaffer, Jr., Trustees of the Estate of A. C. Hop-
kins, respectfully show:

I.

Your petitioners claim to be the owners of the
following described municipal bonds and have here-
tofore filed in this proceeding their reclamation
petition seeking to have an order made turning said
property over to them:

Numbers and Description of Bonds.		Maturity.	Amount.
Nos. 9, 10, and 11, Rigby Inde- pendent School District No. 5..		1932	\$ 3,000.00
Nos. 13, 14, 15, 16, Rigby Inde- pendent School District No. 5..		1933	4,000.00
Nos. 17, 18, and 19, Rigby Inde- pendent School District No. 5..		1934	3,000.00
Nos. 273 to 278, inclusive, Nos. 280, 256, 257, and 269, Buhl Highway District, Twin Falls county		1935	10,000.00
Nos. 91, 92, 93, 94, and 95, Hey- burn-Paul Highway District, Minnidoka county		1934	5,000.00

Nos. 11, 12, and 13, Joint School District No. 6, Fremont and Madison counties	1935	3,000.00
Nos. 14, 15, and 16, Joint School District No. 6, Fremont and Madison counties	1936	3,000.00
Nos. 17, 18, and 19, Joint School District No. 6, Fremont and Madison counties	1937	3,000.00
Nos. 20, 21, and 22, Joint School District No. 6, Fremont and Madison counties	1938	3,000.00
Nos. 23, 24, and 25, Joint School District No. 6, Fremont and Madison counties	1939	3,000.00
Nos. 16, 17, and 18, Independent School District No. 1, Bonner county	1932	3,000.00
Nos. 24, 25, and 26, Independent School District No. 1, Bonner county	1933	3,000.00
Nos. 29, 30, 31, and 32, Inde- pendent School District No. 1, Bonner county	1934	4,000.00

II.

On July 14, 1921, an order was made and entered herein disallowing the claim of petitioners to said bonds. Thereafter, upon review of said order, the District Court of the United States on August 8, 1921, made and entered its order affirming the order of the Referee of July 14, 1921. Thereafter, upon application of petitioners, the

District Court of the United States on August 29, 1921, made and entered its order vacating the order of August 8, 1921, [53] and reopening the claim and referring the petitioner's claim to the Referee in Bankruptcy for the purpose of a rehearing and the introduction of such additional testimony as the parties might desire to offer. Thereafter such rehearing was had and on October 18, 1921, an order was made and entered by the Referee herein again disallowing the claim of petitioners to said bonds. A copy of said order of October 18, 1921, is hereto annexed.

III.

Said order of October 18, 1921, was and is erroneous in holding and determining that said bonds are not properly claimants' and in holding and determining that the title to said bonds did not pass to claimants prior to the adjudication of bankruptcy herein, and in disallowing the claim of claimants to said bonds.

WHEREFORE your petitioners pray that said order of October 18, 1921, may be reviewed as provided in the Bankruptcy Law of 1898, and by General Order No. 27.

Dated, October 20, 1921.

WILLIAM P. HOPKINS,

I. A. SHAFFER, Jr.,

Trustees of the Estate of A. C. Hopkins.

By CAREY & KERR,

C. A. HART,

Their Attorneys.

State of Oregon,
County of Multnomah,—ss.

I, Charles A. Hart, being first duly sworn, depose and say that I am one of attorneys for the petitioners described in the foregoing petition. I further [54] depose and say that the statements of fact therein contained are true according to the best of my knowledge, information, and belief.

I further depose and say that I make this verification on behalf of petitioners because neither of said petitioners is within the District of Oregon.

CHARLES A. HART.

Subscribed and sworn to before me this 20th day of October, 1921.

[Seal]

MARVIN K. HOLLAND,
Notary Public for Oregon.

My commission expires September 12, 1923. [55]

AND AFTERWARDS, to wit, on the 26th day of October, 1921, there was received from the Referee in Bankruptcy and duly filed in said court a decision and order of the Referee in Bankruptcy on the petition of the trustee of the A. C. Hopkins Estate, in words and figures as follows, to wit: [56]

In the District Court of the United States for the
District of Oregon.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

Decision and Order of Referee upon Petition of Hopkins Estate for Reclamation.

The order of the District Court, I take it, requires of the Referee a reconsideration of this petition. I judge that the order heretofore entered denying the petition has been set aside, so that it becomes necessary to dispose of the matter again by formal order on my part. As it is certain any order made by me will be reviewed by one or another of the parties, and as, under the rules upon review, I am required to state the reasons underlying any order made, I shall briefly restate my conclusion in the light of the additional testimony taken and what has heretofore been decided by the Court.

It has already been held both by the Referee and the District Court, upon the record as it reached that Court, that the contract between the parties abided in the two letters, Claimant's Exhibits 1 and 2; that such contract obliged the bankrupt to deliver the property to the purchaser at Lockhaven; and that never having done this, no title to the bonds ever passed to the Hopkins Estate.

By the additional testimony taken under the force of this precise decision, it is attempted to be shown that the contract is somewhat different from what the letters clearly indicate it to be. This testimony is a detail of what was said in the conversation between Mr. Hopkins and an agent or employee of Morris Brothers in Portland, on December 9th,

when Mr. Hopkins called for the purpose of [57] looking into this purchase. It is an interpretation that their mutual understanding was that the bonds were both to be paid for and delivered at Portland; that that portion of Exhibit 1, which proposes a delivery at Lockhaven is in fact merely the result of the direction from Hopkins to Morris Brothers to forward the bonds, when delivered, to Lockhaven, Morris Brothers, it must be assumed, acting as agent for the Hopkins Estate. In my opinion this is an obvious effort to vary by parol the terms of written instruments which are clear, easily understood, wholly free from ambiguity, and quite sufficient to constitute a contract, and this is not permissible under the statute of frauds. It does not matter what form of contract parties choose to adopt; if the form happens to be that of letters, and such letters clearly constitute a contract, the Courts are not more at liberty to rewrite or remake that form of contract than they are in the case of most formal documents. Moreover, it is as true now, upon the whole record, as when the case was first decided, that if the letters are not the contract, there never was one. It certainly cannot be pretended that any binding contract, or any contract, resulted from the conversation detailed in this supplementary testimony. Hopkins himself does not claim this. What there transpired was merely talk, and the whole thing depended entirely upon the co-trustee, Shaffer, who must give his assent and approval of the bonds, their legality, price,

et cetera. Manifestly, this he could not do unless or until Morris Brothers had put in writing the nature of the property it proposed to sell him and named a price and other terms of the proposition. This they did in Exhibit 1, and Shaffer acted, [58] not upon the oral conversation had in Portland by Hopkins, of which he knew nothing, but upon the very instrument now before the Court. He accepted all the terms there laid down, thus completing a binding contract upon which he had a right to rely, and doubtless did rely. And it is too late now to argue that the contract does not require a delivery at Lockhaven. It has already been decided that it does, and I feel very sure correctly so decided.

But if both Court and referee are entirely mistaken about these questions; if it be true that the letters are not the contract or, if they are, such contract may be varied by parol, or if the oral conversation now relied upon is insufficient to constitute a contract for the sale of this personal property, under which delivery was to be made at Portland, still it is incontestible, I believe, that the petitioner must nevertheless fail in this reclamation. It has always to be kept in mind that no specific bonds were bargained for. The bonds were sold out of a general mass, the delivery of any part of which fulfilled the contract. Morris Brothers had the exclusive right to make the segregation for delivery, and undoubtedly at any time before delivery could have substituted for the bonds in the marked envelope any other bonds of the same issue and

surely without being charged with conversion in so doing. There is no intimation anywhere in this record that Hopkins Estate knew anything about this action of Morris Brothers, much less that they assented to it and accepted that envelope, sans approval, count, or inspection, thus shifting both title and responsibility in case of loss or destruction.

The uniform sales law of this state is made to fit all such situations and rule 4 thereof provides:

“(1) Where there is a contract to sell unascertained [59] goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer, or by the buyer upon the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after appropriation is made.”

There is not a scintilla of evidence in this record to bring the acts of these parties within the operation of this law. There was no express assent and nothing from which one can be implied. Indeed, it appears affirmatively the petitioner did not assent, for it knew nothing about any such action having been taken. Hence the segregation relied upon does not avail the petitioner, looking at the transaction from its view of the contract.

The questions here presented are certainly interesting, but at the last, no matter from what corner

they are approached, I am firm in the conviction that, positions reversed, any attempt by Morris Brothers, stopping where they did, to recover from the Hopkins Estate the purchase price of these bonds would have been futile, not to say impudent. And it does not need to be repeated that if one of the parties has the right to sue for the bonds as the title owner, then the other party will have the undoubted right to sue for the purchase money also upon the firm ground it had parted with title.

The petition is therefore disallowed.

Dated, October 18, 1921.

A. M. CANNON,
Referee in Bankruptcy. [60]

State of Oregon,

County of Multnomah,—ss.

Due service of the within petition for review is hereby accepted in Multnomah County, Oregon, this day of October, 1921, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for claimant.

J. P. WINTER,
Attorney for Trustee in Bankruptcy.

Filed October 22, 1921. A. M. Cannon, Referee.

Filed October 26, 1921. G. H. Marsh, Clerk. [61]

AND AFTERWARDS, to wit, on the 14th day of November, 1921, there was duly filed in said court an order of the Court affirming the order of the Referee, and denying the petition of the trustees of the A. C. Hopkins Estate, in words and figures as follows, to wit: [62]

In the District Court of the United States for the
District of Oregon.

No. B-5653.

November 14, 1921.

In the Matter of MORRIS BROTHERS, INC.,
Bankrupt.

**Order of Court Affirming Order of Referee and
Denying Petition of Trustees of A. C. Hopkins
Estate.**

This cause having been heretofore on August 29, 1921, referred back to A. M. Cannon, Referee in Bankruptcy herein, for further hearing upon the petition of the trustees of the Estate of A. C. Hopkins for an order directing the trustee herein to deliver to them certain bonds described in said petition, and the order upon such further hearing denying said petition having been certified to the court for review, this cause was heard upon review of said order of said Referee in Bankruptcy, the said trustees of the Estate of A. C. Hopkins appearing by Mr. Charles A. Hart, of counsel, and the trustee of the estate of the above-named bankrupt

appearing by Mr. John P. Winter, of counsel: on consideration whereof, it is now ORDERED AND ADJUDGED that the order of the said Referee, denying the petition of the Trustees of the said Estate of A. C. Hopkins, be and the same hereby is affirmed, and it is further ORDERED that the petition of the trustees of said A. C. Hopkins Estate for the delivery to them by the Trustee of the estate of the above-named bankrupt of the bonds described in said petition be and the same hereby is denied.

R. S. BEAN,
Judge.

Filed November 14, 1921. G. H. Marsh, Clerk.
[63]

AND AFTERWARDS, to wit, on the 23d day of November, 1921, there was duly filed in said court a petition for appeal, in words and figures as follows, to wit: [64]

In the District Court of the United States for the
District of Oregon.

IN BANKRUPTCY—No. B-5653.

In the MATTER OF MORRIS BROTHERS, INC.,
a Corporation.

Petition for Appeal.

The petitioners, William P. Hopkins and I. A. Shaffer, Jr., trustees of the Estate of A. C. Hopkins, deceased, conceiving themselves agrieved by the judg-

ment and decree made and rendered in the above-entitled court in this cause, and entered therein on the 14th day of November, 1921, at the regular October, 1921, term of said court, in favor of the Trustee in Bankruptcy in the above-entitled proceeding and against the petitioners therein, wherein and whereby it was ordered and adjudged that that certain order of A. M. Cannon, Esquire, Referee in Bankruptcy, dated October 18, 1921, disallowing the claim of petitioners for the reclamation of certain bonds described in their petition theretofore filed, be affirmed, and ordered and adjudging that the petitioners' application and petition to reclaim from the Trustee in Bankruptcy certain bonds specifically listed in their said petition, be denied, do hereby appeal from said order, judgment, and decree thus entered November 14, 1921, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit; and the said petitioners file herewith their assignment of errors asserted and intended to be urged by them on this their appeal.

And the petitioners pray that this their petition for appeal and their said appeal may be granted and allowed, and that citation issue herein as provided by law, and that [65] an order be made fixing the amount of the bond to be given by petitioners upon appeal; and that a transcript of the record, proceedings, and papers upon which said order, judgment, and decree was made and entered, duly authenticated, may be sent to the United

States Circuit Court of Appeals for the Ninth Circuit.

And your petitioners will ever pray.

WILLIAM P. HOPKINS.

I. A. SHAFFER, Jr.,

Petitioners.

By CAREY & KERR,

CHARLES A. HART,

Their Attorneys.

The appeal prayed for in the foregoing petition is allowed as by order made this 23d day of November, 1921.

CHAS. E. WOLVERTON,

District Judge.

State of Oregon,

County of Multnomah,—ss.

Due service of the within petition for appeal is hereby accepted in Multnomah county, Oregon, this day of November, 1921, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for petitioners.

J. P. WINTER,

Attorney for Trustee in Bankruptcy.

Filed November 23, 1921. G. H. Marsh, Clerk.

[66]

AND AFTERWARDS, to wit, on the 23d day of November, 1921, there was duly filed in said court an assignment of errors on appeal, in words and figures as follows, to wit: [67]

In the District Court of the United States for the
District of Oregon.

IN BANKRUPTCY—No. B-5653.

In the Matter of MORRIS BROTHERS, INC., a
Corporation, Bankrupt.

**Assignment of Errors Upon Appeal of William P.
Hopkins and I. A. Shaffer, Jr., Trustees.**

The petitioners, William P. Hopkins and I. A. Shaffer, Jr., above named, complain of the order, judgment, and decree made and entered in the above-entitled court in this cause as alleged in their petition for appeal therefrom, and in the prosecution of their said appeal, they will assert and rely upon the following assignment of errors:

I.

The District Court of the United States for the District of Oregon erred in affirming the order of Honorable A. M. Cannon, Referee in Bankruptcy, dated October 18, 1921, disallowing the reclamation petition of the petitioners for certain bonds listed in their said petition, and in ordering and adjudging that said order of the Referee in Bankruptcy be affirmed, and in ordering and adjudging that the petition of petitioners seeking to reclaim said bonds from the Trustee in Bankruptcy be denied.

WHEREFORE, these petitioners pray that said order, judgment, and decree so made and entered in favor of the Trustee in Bankruptcy and against petitioners be reversed and held for naught, and

that a judgment and decree be rendered and entered herein in favor of petitioners and against the Trustee in Bankruptcy as prayed for in the reclamation petition of the petitioners herein, and that [68] petitioners may have such other and further relief as may be in conformity with law and the practice of this court and as may be proper in the premises.

CAREY & KERR,
CHARLES A. HART,
Attorneys for Petitioners.

State of Oregon,
County of Multnomah,—ss.

Due service of the within assignments of error is hereby accepted in Multnomah county, Oregon, this — day of November, 1921, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for petitioners.

J. P. WINTER,
Attorney for Trustee in Bankruptcy.

Filed November 23, 1921. G. H. Marsh, Clerk.
[69]

AND AFTERWARDS, to wit, on the 23d day of November, 1921, there was duly filed in said court an order of the Court allowing appeal, in words and figures as follows, to wit: [70]

In the District Court of the United States for the
District of Oregon.

IN BANKRUPTCY—No. B-5653.

In the Matter of MORRIS BROTHERS, INC., a
Corporation, Bankrupt.

**Order Allowing Appeal of William P. Hopkins and
I. A. Shaffer, Jr., as Trustees.**

Now, on this 23d day of November, 1921, the above-entitled proceedings coming on regularly to be heard upon the petition of William P. Hopkins and I. A. Shaffer, Jr., Trustees, the above-named petitioners, praying that an appeal be allowed them herein from that certain order, judgment, and decree of this court made and entered herein November 14, 1921, and for the reversal of said order, judgment, and decree; and the said petitioners having filed herein and presented to this court their said petition and an assignment of errors relied upon and intended to be urged by them upon said appeal, and it appearing to the court that said petitioners are entitled to said appeal:

Now, therefore, on motion of Mr. Charles A. Hart, of counsel for petitioners:

IT IS ORDERED that the petition of said William P. Hopkins and I. A. Shaffer, Jr., for appeal from that certain order, judgment, and decree of this Court entered November 14, 1921, be and the same is hereby allowed; and

IT IS FURTHER ORDERED that the bond on said appeal be and the same is hereby fixed at the sum of five hundred dollars (\$500.00).

Dated, November 23, 1921.

CHAS. E. WOLVERTON,
District Judge.

Filed November 23, 1921. G. H. Marsh, Clerk.
[71]

AND AFTERWARDS, to wit, on the 23d day of November, 1921, there was duly filed in said court a bond on appeal, in words and figures as follows, to wit: [72]

In the District Court of the United States for the
District of Oregon.

IN BANKRUPTCY—No. B-5653.

In the Matter of MORRIS BROTHERS, INC., a
Corporation, Bankrupt.

**Bond on Appeal of William P. Hopkins and I. A.
Shaffer, Jr., Trustees.**

KNOW ALL MEN BY THESE PRESENTS,
That we, William P. Hopkins and I. A. Shaffer, Jr.,
Trustees, as principal, and American Surety Com-
pany of New York, as surety, are held and firmly
bound unto E. C. Bronaugh, Trustee in Bankruptcy
of Morris Brothers, Inc., in the full and just sum of
five hundred dollars (\$500.00), to be paid to the
said E. C. Bronaugh, Trustee in Bankruptcy, his

certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 23d day of November, 1921.

WHEREAS in the District Court of the United States for the District of Oregon, in a proceeding pending in said court between William P. Hopkins and I. A. Shaffer, Jr., Trustees under the last will and testament of A. C. Hopkins, Deceased, as petitioners, and E. C. Bronaugh, Trustee in Bankruptcy of Morris Brothers, Inc., as respondent, an order and decree was rendered against the said petitioners and the said petitioners having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said order and decree in the aforesaid suit, and a citation directed to the said E. C. Bronaugh, Trustee in [73] Bankruptcy, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty days from and after the date of the citation:

Now, the condition of the above obligation is such that if the said William P. Hopkins and I. A. Shaffer, Jr., Trustees, shall prosecute this appeal to effect and answer all damages and costs if they fail to make this appeal good, then the above obliga-

tion to be void; otherwise to remain in full force and effect.

WILLIAM P. HOPKINS,
I. A. SHAFFER, Jr.

By CAREY & KERR,
C. A. HART,

Their Attorneys.

AMERICAN SURETY COMPANY OF
NEW YORK.

By W. A. KING,
Resident Vice-president.

[Seal]

Attest: E. LIEMAN,
Resident Assistant Secretary.

W. A. KING,
Agent.

This bond is approved as to form, amount and sufficiency of surety this 23d day of November, 1921.

R. S. BEAN,
United States District Judge.

State of Oregon,
County of Multnomah,—ss.

Due service of the within bond on appeal is hereby accepted in Multnomah county, Oregon, this [74] 23d day of November, 1921, by receiving a copy thereof, duly certified to as such by Charles A. Hart, of attorneys for petitioners.

J. P. WINTER,
Attorney for Trustee in Bankruptcy.

Filed November 23, 1921. G. H. Marsh, Clerk.
[75]

AND AFTERWARDS, to wit, on the 23d day of November, 1921, there was duly filed in said court a praecipe for transcript of record on appeal, in words and figures as follows, to wit:
[76]

In the District Court of the United States for the
District of Oregon.

IN BANKRUPTCY—No. B-5653.

In the Matter of MORRIS BROTHERS, INC., a
Corporation, Bankrupt.

**Praecipe for Transcript of Record on Appeal of
William P. Hopkins and I. A. Shaffer, Jr.,
Trustees.**

To the Clerk of the District Court of the United
States for the District of Oregon:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to an appeal duly taken and allowed in the above-entitled cause, and to include in such transcript the following:

1. Certificate and return of Honorable A. M. Cannon, Referee in Bankruptcy, dated July 19, 1921, including reclamation petition, answer of Trustee in Bankruptcy, stipulation, order disallowing petition, petition for review, transcript of testimony, and exhibits.

2. Order and decree of the District Court made and entered August 8, 1921, affirming order of the

Referee in Bankruptcy and denying reclamation petition.

3. Opinion of District Court accompanying order affirming Referee's order.

4. Petition for rehearing filed August 17, 1921.

5. Order of District Court vacating order of August 8, 1921, and referring reclamation petition back to Referee in Bankruptcy for the introduction of additional testimony and rehearing. [77]

6. Certificate of Referee in Bankruptcy dated October 26, 1921, including order disallowing reclamation petition for review, transcript of supplementary testimony, and exhibits.

7. Order of the District Court made and entered November 14, 1921, affirming order of Referee in Bankruptcy and disallowing reclamation petition.

8. Certificate of clerk of transcript of record on appeal.

CAREY & KERR,
C. A. HART,
Attorneys for Appellants.

Filed November 23, 1921. G. H. Marsh, Clerk.
[78]

AND AFTERWARDS, to wit, on the 29th day of July, 1921, there was received from the Referee in Bankruptcy and duly filed in said court testimony and exhibits, in words and figures as follows, to wit: [79]

In the District Court of the United States for the
District of Oregon.

B-5653.

In the Matter of Estate of MORRIS BROTHERS,
INC., in Bankruptcy.

Testimony.

Portland, Oregon, April 1, 1921.

Hearing on the application in reclamation of William P. Hopkins and I. A. Shaffer, Jr., trustees of the estate of A. C. Hopkins, before Honorable Anderson M. Cannon, Referee in Bankruptcy.

Mr. C. A. Hart appeared for the estate of A. C. Hopkins.

Mr. John M. Winter and Mr. Marion Dolph appear for the Trustee in Bankruptcy.

Mr. HART.—This is a hearing on the application and petition of the Estate of A. C. Hopkins, William P. Hopkins and I. A. Shaffer, Jr., for the delivery to them of certain specified bonds purchased from Morris Brothers, Inc., before the adjudication. The question is that the bonds were paid for but not actually delivered to the Hopkins Estate, and the question for determination is whether or not at the

time of the adjudication these bonds belonged to the Hopkins Estate; that is whether the title had not passed at the time of the adjudication. The petition gives a list of the bonds. I will not read the petition, but they make up a total of \$60,000 worth of securities. The facts [80] are not in dispute, but as to \$10,000 Bay City bonds I am now informed that they were identified and never secured by Morris Brothers. I knew that they were not in just the same situation as the other fifty thousand dollars worth, but I did not know what the facts were. Mr. Dolph tells me, in point of fact, they were never secured by Morris Brothers, and if so I don't see that there is any claim to be made by the Hopkins Estate as to that \$10,000 other than a claim as a general creditor. As to the other \$50,000, here is the transaction: On December 9th, 1920, Mr. William P. Hopkins of Spokane, one of the two trustees of the Hopkins Estate, came to Portland and spent most of the day, or part of the day with Mr. Fred Glenn, then a vice president of the Morris Brothers, Inc. and made a purchase or contract of purchase with Mr. Glenn for \$60,000 worth of bonds selecting the particular bonds as outlined in the petition. The purchase was made subject to the approval of Mr. I. A. Shaffer, a co-trustee with Mr. Hopkins of the Hopkins Estate. The next day a letter was written to Mr. Shaffer, the original of which I have in my files, giving a list of the bonds. Subsequently Mr. Shaffer wrote to Morris Brothers from Lockhaven, Pa., to Morris

Brothers, the date of that letter being December 16th, acknowledging Mr. Glenn's letter, closing his letter with the statement: "You may therefore ship the bonds described in your letter to us, payment for which will be arranged by Mr. Hopkins." Five days later and on December 20th Mr. Hopkins, of Spokane, [81] wrote to Morris Brothers, Inc., enclosing his check as trustee of the Hopkins Estate for \$61,000 to apply on the purchase of the bonds. He stated in his letter that he desired Morris Brothers to send him a statement of the account and that if there was any considerable amount due them he would send another check, asking them to send the securities to Lockhaven with a check for the balance due the estate out of the amount of the check he enclosed. (Mr. Hart thereupon read the letter of Mr. Shaffer and of Mr. Hopkins to Morris Brothers.)

I am informed that at once upon receipt of this letter with the check the bonds were gotten together in a package made up ready for delivery. What I should have said was that after the contract for the purchase was made for the specific bonds the bonds were procured from San Francisco or other places where they were pledged, or otherwise, and sent to the Portland office for the purpose of being used in the consummation of this sale to the Hopkins estate, and prior to and before the check for \$61,000 was received by Morris Brothers, Inc., they had been received here in Portland and were actually assembled. I do not know whether any charge was made.

One statement has been made to me that there was a charge or a credit on Morris Brothers' books showing that these particular bonds were set aside for the Hopkins Estate. I am also informed that the matter went so far as the preparation of a letter [82] transmitting the bonds to Mr. Shaffer. Mr. Dolph or Mr. Winter can give us that information.

Mr. DOLPH.—We have the letter I think.

Mr. HART.—At any rate it is our contention that this was a sale of specific personal property which was in fact identified and set aside and appropriated to the purchaser and that because of that fact the title to these particular bonds which were so identified actually passed to the Hopkins estate and became the property of the Hopkins Estate and were its property at the time of this adjudication. That raises the question as to when the title passed and it is on that question that I have assembled one or two authorities. If the title to this particular property had actually passed prior to the adjudication then the bonds are the property of the Hopkins estate, and we are concerned solely with the question of whether or not the title had passed.

The authorities cited by Mr. Hart were:

Harris vs. Egger, 226 Fed. 389, particularly at page 395, and the case of Hatch, 100 Supreme Court, 124.

After some further argument and talk out of the record, the following witnesses were sworn and examined: [83]

Testimony of Miss Alice Agler, for Claimant.

MISS ALICE AGLER, called as a witness and sworn, was examined and testified as follows:

(Examination by Mr. HART.)

Q. You were occupying what position for Morris Brothers, Inc., at the time of and just prior to the adjudication in bankruptcy?

A. Secretary to Mr. Etheridge.

Q. Are you familiar with the circumstances concerning the purchase by the Hopkins Estate of the bonds listed in the petition by the Hopkins Estate?

A. Well, to a certain degree I am. I know when the order was taken by Mr. Glenn on the 9th of December; the bonds were not delivered at that time and I don't know whether they were all here or not at that time.

Q. I understand from a statement made by Mr. Dolph that \$10,000 of that lot, the Bay City bonds, were not secured at any time?

A. They were to be the same bonds, the same 1934 maturity; I believe they would be in that.

Q. Then all the rest of the bonds, the Idaho School and the Highway District bonds of the different counties in Idaho, all that remained of the \$50,000, they were in San Francisco at the time Mr. Glenn took the order, were they not?

A. On December 9th?

Q. Yes. A. I can't say as to that. [84]

Q. Were they assembled after the Hopkins Estate paid for them?

(Testimony of Miss Alice Agler.)

A. I know on the 24th of December there were quite a bunch of them assembled.

Q. They were all there with the exception of the \$10,000 Bay City's? A. Yes.

Q. Who assembled them?

A. I believe Mr. Taylor counted them out. Mr. Taylor was our collateral clerk.

Q. What did he do with them?

A. They were bunched together and fastened together in some way with this little slip put on them with the name of the purchaser on them.

Q. What was on the slip, do you know?

A. I presume the name of the Hopkins Estate.

Q. What I am getting at, what were they trying to do when they assembled these bonds—were they getting them ready to deliver to the Hopkins Estate? A. Yes, that is what I would say.

Q. They were actually counted out and put together in one package and marked in some way intending to be sent to the Hopkins Estate on account of its purchase?

A. Yes, that is what I would say.

Q. All except the \$10,000 Bay City's?

A. Yes.

Q. Do you know if anything else was done at that time by anyone else towards sending the bonds to the Hopkins Estate?

A. Yes, there was prepared a letter— [85]

Q. Written by whom?

A. By the building department.

(Testimony of Miss Alice Agler.)

Q. What does the billing department have to do with the delivery of bonds?

A. When the bonds are ready for delivery they simply write the shipment letter.

Q. Do you think that kind of a letter was actually written? A. Well, yes, I would think so.

Q. Payment had previously been made for the bonds? A. Yes.

Q. Hopkins estate had paid something like \$61,000 to Morris Brothers for the bonds?

A. Yes.

Q. Do you recall whether there was some balance due? A. There was a small balance due.

Q. And was a bill made out showing that?

A. Yes, that would be sent back with the letter and the bonds.

(Examination by Mr. WINTER.)

Q. When you segregated these bonds for the purpose of sending them to the Hopkins Estate, or their agent, do you know whether it was the intention down there to send a part of the bonds before they had all of them?

A. Well, I don't know. Mr. Taylor seems to think they might have tried to substitute the 32's later, if they did not have the 34's—there might have been something to that effect.

Q. Have you a copy of the original order for those bonds? A. Yes. [86]

Q. Is that here?

A. Yes, I gave it to Mr. Dolph.

Q. Do you know how the order was taken,

(Testimony of Miss Alice Agler.)

whether it was taken through the mail or given by some one in person?

A. No, I think it was in person; Mr. Glenn took it.

Q. Was not the agent of the Hopkins Estate in Portland at the time the purchase was made?

A. Yes.

Q. Have you got the order here?

A. Yes, this is the original order. (Hands order to counsel.)

Q. Will you take it and look at it. In whose handwriting is that order? A. Mr. Glenn's.

Q. By whom is it signed?

A. Mr. Glenn wrote it and he signed it.

Q. Did you have any order or anything that was signed by the Hopkins Estate or entry in behalf of the Hopkins Estate? A. No.

Q. Can you tell from your records when payment was made?

A. Yes, it was made two or three days before the adjudication; it was received in our office about the 22d of December.

Q. Was there a letter transmitting the check in payment?

A. I cannot tell you because I could not find it.

Q. Did you look for it? A. I did.

Mr. HART.—I have a copy of the letter.

A. We looked through our records to-day for it and could not find the original letter. [87]

Q. Did you ever see the original letter?

(Testimony of Miss Alice Agler.)

A. I suppose I did. I open all the mail, but I do not remember much about it.

Q. Do you know whether the paper I hand you dated December 20, 1920, with the heading 215 Jones Building, Spokane, Washington, whether that is a copy of the original letter?

A. I can't tell that because I don't remember anything about it?

Q. You don't remember anything about the letter? A. No.

Mr. HART.—That copy was sent in by Mr. Hopkins of Spokane; he copied his own carbon copy. I wrote Mr. Hopkins on December 30th asking him to furnish me with a complete copy of his file.

Q. (Mr. WINTER.) Do you know how this transaction was entered upon your books, the books of Morris Brothers?

A. I imagine in the ordinary way. When that order came in on the 9th it would be immediately taken to the collateral clerk and he would make his entries accordingly and these bonds could not be touched for anyone else until they were billed out.

Q. Do you know whether at the time the order was taken whether Morris Brothers had the bonds in its possession?

A. Yes, and they order some of the bonds from Seattle, ordered them to be sent down here; whether they were all in out stock in Portland or at the bank, at some bank as collateral, I could not say, but we got them together.

Q. Do you know whether Morris Brothers had

(Testimony of Miss Alice Agler.)

the actual amount specified in this order of these particular bonds? [88]

A. I believe they would have more on some of the Idahos.

Q. Can you tell where these particular bonds were at the time?

A. Yes, I can find out. I think that can be traced back through the records.

Mr. HART.—Find where they came from and when they were sold? A. Yes.

Q. (Mr. WINTER.) Do you know whether any of these bonds were sold by Morris Brothers on interim certificates issued outside?

A. I could not tell that without looking at the records.

Q. Have you examined the final report made by the accountants sufficiently so you could tell me now whether you could determine that matter if you had that report before you?

A. Yes, but it would take a little while to do it, I think, but I could do it.

Q. Who at Morris Brothers had this matter in charge so he or she would know?

A. Mr. Taylor is the collateral clerk.

Q. And he could tell? A. I think he could.

Mr. WINTER.—My judgment is that if this is a copy of your letter that it was not a completed sale. I would like to go into this matter further and find out more about it. I would like to have Mr. Taylor come over and see what he has to say about it.

(Testimony of Miss Alice Agler.)

Mr. HART.—I think we ought to have all the facts, of course. [89]

Mr. WINTER.—The question is who owned the title to the property, of course. If the title passed and the property was yours and if the bonds had been destroyed it would have been your loss. In this particular instance you sent us \$61,000 for some bonds.

Mr. HART.—Specifying the property that we were purchasing. I would like to introduce a letter from Mr. Fred Glenn to Mr. Schafer, one of the trustees of the Hopkins Estate, dated December 10th.

The same was received and marked Claimant's Exhibit No. 1.

Mr. HART.—And also the copy of a letter dated December 15th from I. A. Schafer, Jr., to Morris Brothers, Inc.

The said letter was received and marked Claimant's Exhibit No. 2.

Mr. HART.—And also a letter from William P. Hopkins to Morris Brothers, Inc., dated December 20, 1920.

The said letter was received and marked Claimant's Exhibit No. 3.

Mr. HART.—Let us stipulate also, without encumbering the record, that Mr. Glenn in writing to Mr. Schafer sent copies of the opinions of Teal, Minor & Winfree as to each of the bond issues. I have copies of the opinions here if you care to see them or they can be put into the record. I do not

(Testimony of A. L. Taylor.)

want to unnecessarily encumber [90] the record, but I do want it to be clear that there was a separate legal opinion as to each one of these issues forwarded by Mr. Glenn to Mr. Schaffer with his letter of December 10th.

Mr. WINTER.—That is satisfactory. I guess there is no question about that.

Mr. CANNON.—No, I think there is no question about that.

Mr. WINTER.—Mr. Taylor is here now and Miss Agler may be excused for a few minutes and we will see what he has to say. [91]

Testimony of A. L. Taylor, for Claimant.

Mr. A. L. TAYLOR, called as a witness and sworn, was examined and testified as follows:

(Examination by Mr. HART.)

Q. You held the position of collateral clerk for Morris Brothers prior to their adjudication in bankruptcy? A. Yes.

Q. What did you have to do with the sale and delivery of bonds in that position?

A. When the bond orders came in I saw to it they *they* were reserved and also I filled any orders that were ready for delivery at the time.

Q. How did you fill them?

A. By obtaining the bonds that were in stock and filling the orders with them.

Q. That is of actually making the bonds up in a package or in an enclosure of some kind and mail-

(Testimony of A. L. Taylor.)

ing them out, or sending them out otherwise, shipping them? A. Yes.

Q. Do you remember the purchase of some bonds by the Hopkins Estate in December? A. I do.

Q. That was an order for \$60,000 of Idaho School District and Highway bonds and some Bay City bonds? A. Yes.

Q. Can you tell us just what you did—what took place with reference to that purchase prior to the bankruptcy? A. Yes.

Q. Go ahead and tell about it.

A. The order came in, as I recall, about the first of December, along towards the first of the month, first week [92] of December, and delivery of the bonds was to be made some time thereafter. The order was examined and some of the bonds that were to be used in making up this order were hypothecated with various banks and we had to get these bonds back into our office, and we had got them all together except the Bay City, ready for delivery on December 24th.

Mr. WINTER—What was that date?

A. December 24th.

Q. You had all the bonds in then except the Bay Citys?

A. Yes; they were all assembled and were ready for delivery and had been put aside with Hopkins' name on them.

Q. Where were they kept?

A. They were kept along with my other bonds

(Testimony of A. L. Taylor.)

in stock, but they were segregated, set aside for them.

Q. Were you getting ready to send them out?

A. Yes.

Q. Were you intending to send them on without waiting for the Bay City's?

A. Yes, that was the intention.

Q. You expected to get the Bay City bonds a little later?

A. Yes and complete the order when the Bay City bonds arrived.

(Examination by Mr. WINTER.)

Q. Did you have any arrangement whereby you were going to get the Bay City bonds at all?

A. I am sure we had a contract with the Bay City for the bonds to be delivered later, but I am not positive.

Q. Could you ascertain that fact by going through your records? [93]

A. I think that can be ascertained, yes, sir.

Q. The Port of Bay City didn't issue any bonds that had the maturity the bonds ordered were supposed to have.

Mr. Glenn's letter was introduced in evidence and the same was received and marked Plaintiff's Exhibit No. 1.

Q. What do you know about the issue Mr. Taylor; was there an issue that corresponded to the order as to maturity?

A. That I would not be positive of, Mr. Winter.

(Testimony of A. L. Taylor.)

I am inclined to think there was an issue of 1934's. That can be ascertained.

Q. Were all the bonds that you have referred to as having been segregated; were all those bonds up as collateral at the time the order was taken?

A. Part of them were but I don't think they all were.

Q. Do you know whether any interim certificates were standing out against any of the bonds described in the letter of December 10th?

A. You mean any of these bonds in this letter?

Q. Yes, or in that class?

A. They were not to the best of my knowledge.

Q. Who at Morris Brothers would know of that absolutely?

A. The Bay City, do you mean?

Q. Of any of these bonds described in there, any other of the bonds described in there, whether any interim certificates were standing out for any of them?

A. That could be ascertained by looking up the interim certificate register. [94]

Q. Could you ascertain that if you had before you the report of the accountant?

A. If I had the complete report I could; I mean the report embracing the interim certificates outstanding.

Q. Is the report filed with the final report of the receiver, is that complete?

A. I have not seen the final report.

(Testimony of A. L. Taylor.)

Q. I believe Judge Bronaugh has a copy of that report? A. He may have.

Q. Does that not include all the interim certificates outstanding?

A. I expect it does. I have not looked through it. It should. I could look that up and see.

Q. I wish you would do that.

After a short interval, Mr. Taylor reported that he had looked up the matter inquired about and the following question was asked by Mr. Winter:

Q. Have you found out about the interim certificates?

A. Yes. No interims were against any of these bonds. They were absolutely free and ready for delivery.

Mr. Taylor was excused for the present.

He was recalled later. [95]

Testimony of Fred Glenn, for Claimant.

Mr. FRED GLENN, called as a witness and sworn, was examined and testified as follows:

(Examination by Mr. HART.)

Q. You were vice-president of Morris Brothers, Incorporated, prior to the adjudication in bankruptcy, were you not?

A. I held that position.

Q. You were the representative of Morris Brothers who negotiated a sale of some bonds to the Hopkins Estate amounting to something like \$60,000?

A. I was.

(Testimony of Fred Glenn.)

Q. Were you the author of this letter which is marked Claimant's Exhibit One? A. Yes.

Q. When you negotiated this sale with Mr. William Hopkins, one of the trustees of the estate, what was said, if anything was said, regarding this entire purchase, and as to whether or not it was a purchase of separate bonds, or was it a sale of certain list of bonds which if he took any he would have to take all; or what was said about that, if anything?

A. I don't recall anything like that; no, sir.

Q. What was the transaction as you recall it?

A. I think it is set forth in that letter. I would like to see that letter just to refresh my memory. (Letter was handed to witness.)

Q. Was there a blanket price made for the whole lot of bonds or was a different price set for each separate kind of bonds?

A. Each had its own price.

Q. You took each particular lot of these Idahos, and others, he selected what he wanted and you made him a price? [96]

A. Yes. Each bond or lot had its own price.

Q. Was there any reduction of the prices of any of them in consideration of his agreeing to take the \$60,000 worth of bonds?

A. Not to my knowledge.

(Examination by Mr. WINTER.)

Q. Was it your custom over there that if a person bought \$50,000 worth of bonds that you would sell them at a reduced price?

(Testimony of Fred Glenn.)

A. Not to my knowledge. I don't believe any special concessions were offered.

Q. Was it a general custom where a man bought as much as \$50,000 that you would sell at a less rate than if he only bought \$10,000 worth?

A. That would be owing to the customer. Some special concessions might be made to insurance companies; they might get an inside price, or banks or other bond houses. In this particular instance it was an estate and so far as I could say the estate would not be entitled to any concessions.

Q. Do you know what the usual price was for which these bonds were sold?

A. I think in this sale we sold them at list prices. I am sure they were all sold at list prices.

Q. What do you mean?

A. The circular price. The prices as stated on our circulars. I believe they were all sold at list prices.

Q. You say you "believe" do you know to be a fact?

A. I would not know it unless I looked up the circular again. It is my recollection there was no special concession discussed with Mr. Hopkins.

Q. At the time this order was taken and at the time you [97] had the negotiations with Mr. Hopkins and took the order for the bonds, a part of the bonds being the Bay City bonds to the extent of \$10,000 due 1934 at a price to net the estate 6½%; did you have these particular bonds on hand at that time?

(Testimony of Fred Glenn.)

A. I would not have a knowledge as to whether they were on hand or not.

Q. You took the order? A. Yes.

Q. Do you know whether you had a contract to buy these particular bonds?

A. I think the contract existed, yes, sir.

Q. You think it existed?

A. To the best of my knowledge and belief it existed.

Q. Did you sell bonds and take orders for them without knowing whether you had them or could get them?

A. Well, these were the only bonds that I ever sold for Morris Brothers. That was the only order I ever took. In other words my business was not that of selling bonds.

Q. How did it happen you took this order?

A. Well, Mr. Hopkins asked a good many technical questions, and his letters were from time to time turned over to me and I endeavored to answer them to the best of my ability. A lot of our people were not qualified as well as I was to answer these questions intelligently and for that reason all this correspondence passed through my hands and when Mr. Hopkins came to town he was referred to me.

Q. Do you remember what Mr. Hopkins said at the time you took this order? [98]

A. We simply went over each issue; in other words, I had a book of circulars describing each of the issues in question. I had an old book as I remember it, of printed bulletins—I guess you'd

(Testimony of Fred Glenn.)

call them bulletins, and he selected several issues of school bonds.

Q. What did he say as to the amount of bonds that he wanted?

A. He didn't state how many he expected to buy. He merely said he would take \$10,000 of this and \$10,000 of this, and he gave me that order as I have made it out in the course of about fifteen minutes.

(Examination by Mr. DOLPH.)

Q. Do you know Mr. Shute, one of your salesmen? A. Yes, I think so.

Q. Didn't he first take up the sale of these bonds with the Hopkins Estate?

A. Not to my knowledge.

Q. If he told me he had, he might have taken the matter up with them and then the matter was referred to you?

A. He might have. I don't know who, or if anyone, talked to Mr. Hopkins prior to my talking to him.

Q. Do you think he was perhaps referred to you because of the technical questions you spoke about and that somebody else had paved the way?

A. I had spent the day with him, going out to Multnomah County Drainage District. Mr. Shute went along but he did not attempt to sell him any bonds on that trip; that I know.

Q. Mr. Shute told me something about a big sale he had made to the Hopkins estate, and that in con-

(Testimony of Fred Glenn.)

nection with some deal with the Western Bond and Mortgage Company. [99]

A. Mr. Shute drove the automobile and I went along.

Q. Do you know whether or not the Bay City bonds mentioned in your letter dated December 10, 1920, whether these particular bonds ever came into the possession of Morris Brothers, Incorporated?

A. I have no knowledge whether they did or not. I might state for the benefit of those present that it was my understanding that the bonds were all billed out.

Witness excused. [100]

Testimony of George T. Washington, for Claimant.

Mr. GEORGE T. WASHINGTON, called as a witness and sworn, was examined and testified as follows:

(Questions by Mr. HART.)

Q. You were one of the auditors engaged in the work of going over the Morris Brothers accounts under Mr. Whitcomb, the temporary receiver?

A. I was.

Q. Will you give us what explanation you can with reference to the listing of the general assets and especially with reference to the item of \$50,000 worth of bonds purchased by the Hopkins Estate from Morris Brothers in December, 1920?

A. Generally I examined all the bonds on hand in Morris Brothers, that being the first work I took

(Testimony of George T. Washington.)

up. I do not recollect any specific bonds for Hopkins Estate, or whatever the name was. This is the first time I ever heard of any such bonds belonging to Hopkins. In determining the liabilities of the company for bonds that may have been or not have been paid for, I analyzed all the accounts payable expecting to pick up any liability for bonds that were not paid for. I found no liability—I am certain I found no such account as that.

Q. These bonds were paid for and were done up ready for delivery and the testimony here indicates that they were made up in a package, or were assembled and ready for delivery at the time of the bankruptcy, and that when you took hold they were turned over to you in one lot or package. Do you recall that? [101]

A. I can positively say that there was no such package handed to me which contained any mark of any kind that would indicate they were not the bonds of Morris Brothers.

Q. Did you see a letter written to Mr. Whitcomb, the temporary receiver, signed by Charles A. Hart on the Carey and Kerr letter-head?

A. No, that was not handed to me and it was never called to my attention. I never heard of it. If I had, naturally it would have been one of the things that I would have gone into very carefully. Every effort was made to distinguish and keep apart the assets of Morris Brothers and those they

(Testimony of A. L. Taylor.)

held in trust. I would like to have Mr. Taylor tell what he knows about that.

Testimony of A. L. Taylor, for Claimant (Recalled)

Mr. A. L. TAYLOR, was recalled, and questioned by Mr. HART, as follows:

Q. Mr. Taylor, in what condition were these \$50,000 of bonds covered by the Hopkins purchase at the time of the bankruptcy?

A. They had all been assembled and they were set aside, segregated from the other bonds and placed separately with an elastic band around them and the name of A. C. Hopkins written across the end in led pencil on a piece of paper and that paper placed under the rubber band to indicate that they were the Hopkins Estate bonds.

(Questions by Mr. WINTER.)

Where were they kept?

A. They were kept in a drawer, or rather in this sliding arrangement separate from the other bonds. [102]

Q. Were there any other bonds in this slide excepting these particular bonds?

A. Yes, some Japanese Government bonds and some Liberty bonds and I think some U. K. bonds.

Q. Had the Japanese bonds been purchased by anybody?

A. We had purchased them for a certain individual, a Japanese, whose name I have forgotten.

Q. Purchased on interim certificates?

(Testimony of A. L. Taylor.)

A. No; we had bought them on the market.

Q. Were these Japanese bonds on hand at the time of the bankruptcy? A. Yes.

Q. How were they separated; was there a band around them and were they marked?

A. No, they were not marked, but they were in a small compartment, the same one with the Hopkins bonds.

Q. Do you know how they are reported in the auditor's report?

A. I believe under general assets.

Q. And these Liberty bonds you spoke of did they belong to any particular person?

A. I think they did. I really can't say positively.

Q. When were these particular bonds which you claim belong to the Hopkins Estate embraced in their purchase, when were they secured and assembled?

A. The segregation commenced, I think, about the 12th of December, somewhere about that time. Some of them were hypothecated at various banks and they had to be brought in. Some were in Seattle, and some, I think, were at the U. S. National Bank, and so on, and we exchanged other bonds for them and brought them in to fill the Hopkins order, and the segregation [103] commenced about the 12th of December and continued from day to day up to the 20th of December when we had them all in except the Bay City.

Q. As I understand that, as you got in a part of

(Testimony of A. L. Taylor.)

the bonds covered by the Hopkins order you segregated them or assembled them together.

A. Yes, into a separate segregation, apart from the other bonds.

Q. And when you started to so segregate them it was your purpose or intention after you had them all segregated or assembled to notify the Hopkins Estate that you were shipping them out?

A. Yes.

Q. You did not at the time have any intention of shipping them until you had them all segregated?

A. We intended to have them all segregated and ship them all at once.

Q. And that is the reason why they had not been shipped on the 24th of December? A. Yes.

Q. (Mr. HART.) They were not paid for until the 24th?

A. The check came in between the 21st and 24th.

Q. (Mr. WINTER.) Did you start to segregate them before they were paid for?

A. Yes, just as soon as we got the order.

(Excused for the present.) [104]

**Testimony of George T. Washington, for Claimant.
(Recalled).**

Mr. GEORGE T. WASHINGTON, recalled for further examination.

Mr. HART.—I offer in evidence a letter dated January 5th, 1921, addressed to W. D. Whitcomb,

(Testimony of George T. Washington.)

receiver of Morris Brothers, Inc., signed by Carey & Kerr, and written by myself.

The same was received and marked Claimant's Exhibit No. 4.

Mr. HART.—I wrote that letter on the suggestion of Mr. Whitcomb so he might have it before him as a matter of record.

Mr. CANNON.—Evidently they overlooked it.

Mr. HART.—I also offer in evidence a letter acknowledging receipt of the letter marked Claimant's Exhibit No. 4, written by Mr. Whitcomb and dated January 6, 1921.

The same was received and marked Claimant's Exhibit No. 5.

Q. While ago I think you started to tell where these bonds were and why they were listed as general assets of Morris Brothers; do you want to continue that statement?

A. I would like to continue what I had to say in this way; the only thing I want to say, if these bonds were in with the other bonds of Morris Brothers, naturally it was to be assumed they were the property of Morris Brothers and that was the understanding I had from Mr. Taylor of all the bonds contained in their files. Apart from these general files of Morris Brothers there was what they termed the black can in which the segregated bonds for delivery were placed. I simply take this position, that if the bonds were in this general file they [105] belonged to Morris Brothers. I do not recall any

(Testimony of George T. Washington.)

bonds marked specially for any certain individual or estate. Had I seen them, naturally I would have inquired into them. I just assumed from the fact that they were not segregated that they all belonged to Morris Brothers and were not held by them for any one, and because they were in there I feel that I was justified in taking it for granted that they were the property of Morris Brothers. The letters that passed between you and Mr. Whitcomb I did not see, if I had I would have gone into the matter most certainly.

Q. Would you then have undertaken to have set the bonds aside?

A. I certainly would have gone into the matter. I went over all their securities of every description. (Examination by Mr. WINTER.)

Q. If these bonds had been labeled in any way with a rubber band around them and marked as if they belonged to some particular person, would not that matter have attracted your attention?

A. It certainly would have.

Q. And would not that have caused you to make inquiry as to whether they were the property of Morris Brothers? A. It would have.

Q. Or whether it was trust property, or otherwise, before you made your report?

A. It would; yes sir.

Q. Do you remember this particular bunch of bonds? A. No, sir. [106]

(Testimony of George T. Washington.)

Q. Have you any recollection at all in regard to them? A. No, sir.

Q. When did you begin to examine these bonds?

A. On the evening of December 24th. That was my particular work and I was the first one who went into the securities and made a list of them. That was my first work there.

Q. Will you tell where you found these bonds?

Mr. HART.—He has just said he did not remember them.

A. If you want a detailed description of the manner in which I examined the securities presumed to be the property of Morris Brothers, I would be glad to give it to you. The securities presumed to be the property of Morris Brothers were contained in the general files and in a general bond cabinet. Mr. Taylor and I first examined that cabinet and listed the bonds and rechecking them outside to see that we had all the securities contained in there. Later in the night we took up the securities that were on hand in various places, in tin boxes and in the cashier's cages, and proceeded to list and check them in the same manner. About one or two days afterwards, after I had concluded that we had found all the bonds, we found what they called their black box, and these were not listed until Monday or Tuesday following.

Q. What did you find in the black box?

A. Bonds segregated for delivery under various conditions.

(Testimony of George T. Washington.)

Mr. HART.—Against which interims were outstanding.

No answer.

Q. Could you refer to the schedule here and indicate the bonds that were in the black box?

A. Mostly the bonds in the black box were segregated for delivery, and it contained, as shown there, bonds on which [107] interims are outstanding or segregated for delivery and set aside against specifically prescribed interim certificates. In addition to that there were other bonds of the company in that same box that were segregated for delivery. These particular bonds in question were not in this box I do not recollect them at all. Mr. Taylor just referred to the bond files where the bonds were and none were segregated at all.

Q. You have no independent recollection in regard to these bonds for the Hopkins estate?

A. No, sir; none whatever.

Q. Do you think you could refresh your memory in any way—by your work sheets, for instance?

A. I could possibly.

Q. Will you look at the final report—I do not know whether it can be done, or not—and tell how the report shows the money that the Hopkins Estate paid for the bonds is recorded?

A. It would not be shown there.

Q. Would not they have credit for that money?

A. No, sir, it would be contained in the general

(Testimony of George T. Washington.)

cash account appearing in the books of the company, and perhaps in the bank deposit books.

Q. How could we examine that final report and ascertain how much money was paid by the Hopkins Estate for bonds?

A. That could not be ascertained from the report, for the money had been paid in already and entered in the general cash.

Q. When the check for \$61,000 was paid to Morris Brothers would not the books of Morris Brothers credit the Hopkins Estate with \$61,000?

A. Yes. [108]

Q. Would not that report show that?

A. No, sir, that was a closed transaction.

Q. It was closed?

A. Yes, it was a closed transaction to the extent that Hopkins would have received credit for the \$61,000.

Q. Then your report would show that Hopkins got credit for \$61,000?

A. No, and I do not remember any credit for any such an amount.

Q. The final result would be if your report does not show that they are general creditors would be that there are that many less assets in the bankrupt estate of Morris Brothers; the assets of the estate would be reduced; that is the point I am trying to bring out. If they were the property of Morris Brothers then the books or your report should show

(Testimony of George T. Washington.)

that Morris Brothers owed the Hopkins Estate that much money?

A. It was a closed account as far as the books were concerned.

Q. If the assets are going to be reduced by this amount we want to find it out. We don't know but what there are other instances like this. We are depending on your report to show that.

A. If there are any such cases as this developed all I can say is that their method of keeping their records did not disclose it.

Q. As I understand your report, it does not show that Morris Brothers was indebted to the Hopkins Estate to the extent of \$61,000 or that the Hopkins Estate had that many bonds coming to it?

A. No, it does not disclose that. These bonds were in the [109] general files of Morris Brothers.

Mr. CANNON.—We understand that. It is not a question of criticising your work. Here is the ledger account which shows that this \$61,000 was received and what it was received for no doubt, but the bonds not being segregated, I can understand how Mr. Withington could assume that Hopkins Estate had its bonds and that the transaction was closed.

Witness excused. [110]

Testimony of A. L. Taylor, for Claimant (Recalled).

Mr. A. L. TAYLOR, recalled by Mr. HART.

Q. You have heard the testimony of Mr. Withington to the effect that he has no recollection of seeing these Hopkins bonds set apart in any way and that they were in the general files and not in the so-called black box, or the box which contained the segregated bonds?

A. The reason they were not in there is because there was not room for them.

Q. Was it your intention to put them there?

A. No, because there was not room in that box for this large bundle of bonds.

Q. Was that where they belonged?

A. Yes, ordinarily they would have been placed in there, but as a matter of fact I understood these bonds were going out that day, December 24th; they were billed out and I supposed they were going out. As a matter of convenience and because there was not room for them in the other box they were placed by me down at the bottom of the file just for the time being and until they were sent out. They were placed there solely because the package was too large to put it in the other place.

Q. Do you have any recollection of calling Mr. Withington's attention to the bonds that did not belong to the Company?

A. Yes, I have a very vivid recollection of calling his attention to them.

(Testimony of A. L. Taylor.)

Q. In what way?

A. The bonds in this package were rather bulky to handle, as I say, and they had a rubber band around them with the name on them written on a piece of paper, and when Mr. [111] Withington took the bonds over from me, these bonds were in the bottom of the file and I called his attention to them; I remember calling his attention to the fact that these bonds were for the Hopkins Estate when he was listing the general assets of the company. I remember calling his attention to the fact that this package of bonds belonged to the Hopkins Estate at that time.

Q. Fred Morris had taken charge of Morris Brothers at that particular time? A. Yes.

Q. Mr. Etheridge had left the city? A. Yes.

Q. (Mr. DOLPH.) How was it you got ready to deliver these particular bonds to the Hopkins Estate on the 24th of December when you did not have all of them; you did not have the Bay City bonds which were a part of the order?

A. Well, I think the order stipulated that the Bay City's were to be delivered at a later date.

Q. You intended to deliver these bonds notwithstanding the fact that you did not have all the bonds covered by the order?

A. I was going to deliver what we had and the Bay City's later and we were writing a letter to explain the matter.

Q. Did you write a letter of explanation?

(Testimony of A. L. Taylor.)

A. I don't know whether it went out or not.

Q. Was one prepared?

A. I think one was prepared. I did not prepare it.

Q. Did you know anything about the letter that was written to William P. Hopkins by Mr. Etheridge on December 22, 1920? [112]

A. Yes, I knew there was a letter written.

Q. Did you dictate that letter?

A. No, I did not.

Q. Did you direct it to be dictated? A. No.

Q. That was handled by Mr. Etheridge in person? A. Not according to this.

Q. You don't know anything about that letter?

A. No. I know it was written.

Witness excused.

Mr. WITHINGTON.—Mr. Taylor, don't you remember that I asked you if these were all Morris Brothers bonds and you told me they were.

Mr. TAYLOR.—I remember you asked me and I told you that was all the bonds we had in the house of every description. [113]

Testimony of Miss Alice Agler (Recalled).

MISS ALICE AGLER, recalled, was examined as follows:

(By Mr. WINTER.)

Q. Will you look at this letter, Miss Agler? Did you prepare that letter? A. No, I did not.

(Testimony of Miss Alice Agler.)

Q. Do you know who dictated it?

A. It looks to me like it was written by one of the stenographers. Mr. Etheridge's initials are here and the young lady's and it may have been written by Mrs. Granning or someone in her department. If I had written it or signed it there would have been an A there.

Q. Who do you think wrote the letter?

A. Miss Switzler wrote it; her initials are there. I don't understand how she came to write it without someone dictating it, as this was from Mrs. Granning's department.

Q. Was that report you have in your hand attached to the letter?

A. Yes, it is attached to the letter.

The letter and the report offered in evidence and marked Trustee's Exhibit "A." (Two sheets.)

Mr. HART.—I object to this exhibit. It is not a letter that was prepared and found among the property at the time of the adjudication. It is a letter dated December 22, 1920, and was never sent out. It was never mailed.

Q. (Mr. HART.) Miss Agler was this letter ever mailed out? A. No, it was not mailed.

Q. (Mr. CANNON.) You say this letter was never mailed? A. No, it was not mailed.

Q. (Mr. WINTER.) Where did you get this letter? [114]

A. I found that in a desk used by Mrs. Granning—in one of the drawers in Mr. Etheridge's room.

(Testimony of Miss Alice Agler.)

Q. You don't know whether Mr. Etheridge dictated this letter, do you?

A. No, sir, he did not.

Q. You think he did not?

A. I think he did not.

Q. Do you think it was written probably at his dictation?

A. I don't think it was. I don't know how it happened to be written. Mrs. Granning may be able to throw some light on it.

Witness excused.

Adjourned without date. [115]

April 18, 1921, 2:30 P. M.

Pursuant to agreement this matter came on again for hearing for the purpose of taking further testimony. The same parties being present as heretofore at the same place:

Testimony of Earl Edward Edmunds, for Claimant.

EARL EDWARD EDMUNDS, called as a witness and sworn, was examined and testified as follows:

(Examination by Mr. HART.)

Q. Prior to the Morris Brothers bankruptcy adjudication you occupied a position with that company? A. Yes, sales manager.

Q. Were you advised of the sale of some \$60,000 of securities to the Hopkins estate in December, 1920? A. Yes.

Q. Do you know what was done by the Morris

(Testimony of Earl Edward Edmunds.)

organization towards the delivery of these bonds, just prior to the closing of the doors?

A. It was my understanding that Mr. Hopkins came to Portland and made his selection of different blocks of bonds that he would take.

Mr. WINTER.—Just tell us what you know.

Mr. HART.—This is just preliminary.

A. He made his selection of these different bonds and they had to be secured from the different banks where they were up as collateral and they were to be shipped out to them as soon as we received them in our office.

Q. All but \$10,000 of Bay City's were collected by the Morris Brothers company previous to the closing of the doors; is that the fact?

A. I don't know that positively. [116]

Q. What knowledge have you with respect to what was done?

A. On Friday the 23d I saw the package that had been segregated of these bonds; they had been segregated and a black rubber band put around them with a slip of paper stuck under the band designating thereon the fact that they belonged to the Hopkins Estate.

Q. Do you know what was done with that package?

A. The package was lying on top of the big tin box or can that we kept such packages of bonds in, that is bonds that were set aside for certain people.

Q. Do you know whether any steps were taken towards sending them out?

(Testimony of Earl Edward Edmunds.)

A. Not positive, although it was understood they were to go out.

Cross-examination by Mr. WINTER.

Q. Did you say you were general sales manager down there? A. Yes.

Q. As such sales manager would you have general supervision of the sales of all bonds?

A. My authority was very limited; very limited indeed.

Q. It was limited? A. Yes.

Q. Did your duties keep you inside or out on the road with Morris Brothers?

A. I was in the office all the time.

Q. There is something in the letters here that says these bonds were to be shipped to the Hopkins Estate in Pennsylvania by registered mail, insurance prepaid; do you know how that insurance was written?

A. It was written right in the office by Morris Brothers. [117]

Q. For instance, the letter of Morris Brothers dated December 10, 1920, in evidence here as Exhibit One, says the bonds above mentioned are to be delivered to you about December 23, or 24, 1920; we will send same via registered mail insurance addressed to the Estate of A. C. Hopkins, Lock Haven, Pennsylvania. Just tell how they were insured?

A. They were insured through the Pacific States Fire Insurance Company. We had a sort of a branch agency right there in the office of Morris

(Testimony of Earl Edward Edmunds.)

Brothers where the insurance was written.

Q. Were they insured in favor of Morris Brothers, loss if any payable to Morris Brothers.

A. I am not positive of the wording of the insurance policy. I am inclined to think they were. That can be ascertained.

Witness excused. [118]

Testimony of Mrs. Granning, for Claimant.

MRS. GRANNING, called as a witness, was sworn, examined and testified as follows:

Direct Examination by Mr. HART.

Q. You were acting in what capacity with Morris Brothers, Inc., prior to the closing the doors, in December, 1920?

A. I looked after the shipping out of securities and wrote letters regarding sales and different transactions connected with the sending out of bonds and securities.

Q. Do you recall the sale of the bonds to the Hopkins Estate in December? A. Yes.

Q. Will you state what was done prior to the closing of the doors of Morris Brothers regarding getting this purchase of bonds ready for delivery.

A. Yes, the letter was received from the Hopkins Estate setting forth that they wanted a certain amount of bonds and they enclosed a check to us for \$61,000. The bonds were taken out of stock and put up in a package and marked for the Hopkins Estate. They were all taken out with the exception of some \$10,000 of the Port of Bay City bonds

(Testimony of Mrs. Granning.)

of a definite maturity, and they were not set aside because Morris Brothers had intended to take them up from the Port of Bay City as they had been paid for by the Hopkins Estate. When the check was received it was immediately deposited in the bank and a bill made up covering the amount of the bonds that they were buying and a letter written to Mr. Hopkins in Spokane, which letter was never sent out from the office. It was still there in my basket when the doors were closed, I think.

Q. Was the letter signed?

A. The letter was not signed. I had also made out the check [119] covering the amount they had overpaid by their check for \$61,000, and that check was not signed either.

Q. Can you state generally what the contents of that letter was?

A. I might have signed the letter but I do not think I did as Mr. Fred Morris was then in charge of the office and I was not sure what his method of procedure would be; otherwise the letter would have been signed by me.

Q. Will you look at the letter which was introduced in evidence here and marked Exhibit "A," Hopkins, and advise the Court if you wrote that letter?

A. Yes, but there was also an itemized statement of the bonds which should be attached to the letter and also the check for something like \$800 which was to be returned to Hopkins Estate. I am sure this is the letter because I acknowledged receipt of

(Testimony of Mrs. Granning.)

the \$61,000 and it would have been signed and sent out but that was the 24th and Mr. Morris had taken charge and I was not able to get the check signed. There did not seem to be anybody to sign it.

Q. What do you say as to the intent of shipping the \$50,000 immediately or waiting until the whole lot of bonds were received?

A. I was talking to Mr. Pratt about that and he said he thought it was the intention to ship out the \$50,000 that day and then he was going to write a letter to Mr. Hopkins explaining the matter about the Bay City's.

Q. Was it or was it not the intention on the 24th of December to ship out the \$50,000 bonds without waiting for the others?

A. Mr. Pratt said he thought we ought to do that.

Q. Why was that not done? [120]

A. I presume on account of the excitement and the fact that Mr. Morris had taken charge and everything was in an upset state. The bonds were all set aside immediately following the receipt of the check for \$61,000 and were marked for the Hopkins Estate.

Cross-examination by Mr. WINTER.

Q. I call your attention to Exhibit One, a letter written by Morris Brothers, which is in evidence. Do you recognize that letter?

A. I do not. I never saw it.

Q. I call your attention to the copy of a letter marked Exhibit Two; did you ever see the original of that letter? A. No.

(Testimony of Mrs. Granning.)

Q. Now, I call your attention to Exhibit Three and ask you if you ever saw that letter? A. Yes.

Q. That is the letter you referred to when you said you received the check for \$61,000?

A. Yes. When I received the letter and the check I also received an order from the sales department giving a list of the bonds that were to be shipped on that order.

Q. The letter that is in evidence marked Exhibit "A," do you know whether you wrote that or not?

A. I dictated it.

Q. At whose instructions was that letter dictated by you?

A. I was instructed by no one. The mail was put on my desk and it was my duty to handle it and I handled it of my own accord.

Q. The itemized statement you referred to is that the statement attached to this letter? [121]

A. It looks like it; yes.

Q. In this letter you say: It is dated December 22, 1920, and is marked for this record, "Trustee's Exhibit 'A,' Hopkins." "Mr. William P. Hopkins, 215 Jones Bldg., Spokane, Wash. Dear Sir: We have received your letter of December 20th inclosing check for \$61,000 and pursuant to your request inclose herewith itemized statement covering the bonds purchased from us on December 9th. If you find the same in due order kindly advise us and we will make prompt shipment to Mr. Shaffer at Lock Haven, Pa. Awaiting your further advices in connection with this matter and assuring

(Testimony of Mrs. Granning.)

you of our appreciation of this splendid business, we beg to remain, Very truly yours, Morris Brothers, Inc. By John L. Etheridge, President. JLE-CS." Was it your intention to ship the entire lot and enclose him the check for the balance?

A. The check was attached to the statement.

Q. The balance due from Morris Brothers was \$823.65; that was the amount of the check?

A. Yes. I wrote the check but was never able to get it signed.

Q. Was it your purpose to secure the Bay City bonds and then ship them all at the same time?

A. Ship them all at once.

Q. Could you say whether or not at the time this order was taken on the 10th of December, or the 9th of December, you had in your possession any of the bonds covered in this statement?

A. They were all there I presume with the exception of the port of Bay City. We had some Bay City's but not of that particular maturity. [122]

Q. Could you tell whether or not any of these particular bonds were up as collateral?

A. Yes; I heard Mr. Taylor say he had to get these bonds from various sources.

Q. When you got these bonds in, for instance, here is \$10,000 Jefferson County, Idaho Rigby; now, when you received that bond in your house, did you immediately segregate it and set it aside under this particular order?

A. Mr. Taylor handled the securities at that time.

(Testimony of Mrs. Granning.)

Whether those bonds were in San Francisco or some other place, I don't know. I can't tell.

Q. You don't know how that was done?

A. No, I heard him say he had to get these bonds from various place where they were up as collateral, and when I wrote the letter they were all there except the port of Bay City.

Q. Did you look after the insurance?

A. No, our office boy looked after that. I checked it up and signed the letters.

Q. If these bonds had been shipped you would have sent them by registered mail? A. Yes.

Q. Insured? A. Yes.

Q. With loss, if any, payable to whom?

A. To Morris Brothers because we were responsible for the bonds until they arrived at their destination.

Q. That is the way you view it? A. Yes.

Mr. HART.—That was your universal practice?
[123]

A. The bonds were all registered and insured; yes, sir.

Q. Did you pay the insurance charges?

A. It was charged to us.

Mr. HART.—That is all the testimony we have to offer.

Mr. WINTER.—We have nothing further.

Mr. CANNON.—I would like to have briefs. The matter will be then decided. [124]

April 28, 1921, 3 P. M.

The Hopkins Claim was again opened and the following testimony was taken, on the above date, the same parties as heretofore noted, being present at the office of the Referee in Bankruptcy:

Testimony of A. L. Taylor, for Claimant.

Mr. A. L. TAYLOR, called as a witness for the claimant,

Direct Examination by Mr. HART.

Q. Have you gone over the record of Morris Brothers at my request, Mr. Taylor, to determine which of the bonds included in the order of the Hopkins Estate of December 9, 1920?

A. I have.

Q. According to the evidence given in this case, that purchase included \$3,000 Bonner County School District No. 1 5½% bonds, 1932 maturity. How much of that particular maturity did Morris Brothers own *in* December 9, 1920? A. \$4,000.

Q. And what were the numbers of those bonds?

A. Sixteen to 19, inclusive.

Q. Subsequently and prior to the bankruptcy were \$3,000 of this \$4,000 lot set aside and included in a package of bonds for the Hopkins Estate?

A. Yes.

Q. Which numbers were so set apart?

A. Three of these four numbers. I think 16 to 18, inclusive. I could tell that definitely by the sales slip.

(Testimony of A. L. Taylor.)

Q. It does not make any particular difference so long as you can tell. Now, of this same school district, Bonner County, Idaho, School District No. 1, the Hopkins purchase included \$3,000 of the 1933 maturity. Will you say how much of that maturity Morris Brothers owned on December 9, 1920? [125]

A. They owned \$3,000.

Q. What were the numbers of those bonds?

A. From 24 to 26, inclusive.

Q. Those were the bonds which were included in the package set aside with the Hopkins Estate name on it? A. Yes.

Q. The next item in the Hopkins purchase was \$4000 Bonner County School, 1934 maturity; how many of those bonds of that maturity did Morris Brothers own on December 9th, 1920?

A. \$4,000.00.

Q. What were the numbers of those?

A. From 29 to 32, inclusive.

Q. And were they included in the package set aside with the Hopkins name on it? A. Yes.

Q. The next in the Hopkins purchase are the Fremont and Madison counties, Idaho joint school district No. 8, \$3,000 each of the following maturities: 1935, 1936, 1937, 1938 and 1939; how many of each of these maturities did Morris Brothers own on December 9, 1920?

A. They owned \$3,000 of each of those maturities.

(Testimony of A. L. Taylor.)

Q. Were they included in this package that was set aside for the Hopkins estate? A. Yes.

Q. What were the numbers of those bonds?

A. From 11 to 25, inclusive.

Q. The next are the Heyburn-Paul Highway district of Mindoka County, Idaho 6% bonds, \$5000 of the 1934 maturity. How many of those bonds did Morris Brothers own on December 9th, [126] 1920? A. \$5,000.

Q. What were the numbers of those?

A. From 91 to 95, inclusive.

Q. And were they also included in the package you have referred to with the name of Hopkins on it? A. Yes.

Q. The Rigby Independent school district, Jefferson county, #5, 6% bonds. The Hopkins purchase included \$3,000 of the 1932 maturity; how many of these particular bonds did Morris Brothers own on December 9th, 1920? A. \$4,000.

Q. What were their numbers? A. Nine to 12.

Q. Can you tell which three of that four thousand dollars worth were included in the package set aside for Hopkins?

A. No; no more than \$3,000 of this \$4,000 were included in the package for Hopkins.

Q. The next of the Rigby Independents the same as the last mentioned in the Hopkins purchase were \$4,000 of the 1933 maturity, numbered from—do you know their numbers?

A. Thirteen to sixteen, inclusive.

(Testimony of A. L. Taylor.)

Q. How many did Morris Brothers own of those on December 9, 1920?

A. \$4,000 of the 1933 maturity numbered from 13 to 16, inclusive, and these were included on the Hopkins package.

Q. The next of the Rigby Independents were \$3,000 of the 1934 maturity; how many of these did Morris Brothers own on December 9th, 1920?

A. \$4000. [127]

Q. And their numbers?

A. Seventeen to 20, inclusive.

Q. Are you *able* which \$3000 of this \$4000 lot were included in the Hopkins package? A. No.

Q. But were \$3000 of these bonds included in the package? A. Yes.

Q. County of Twin Falls are the next, Buhl Highway District, Idaho, 6% bonds, the Hopkins purchase included \$10,000 of these of the maturity of 1935; how many of these bonds did Morris Brothers own on December 9, 1920? A. \$12,000.

Q. What were their numbers?

A. Numbers 256, 257, 267, 273, 274, 275, 276, 277, 278 and 280. \$2000 out of the \$12,000 was delivered to another purchaser subsequent to this date.

Q. Were the numbers which you have mentioned all contained in the package that you have referred to and which was set aside for the Hopkins estate?

A. Yes.

Q. The next are the Port of Bay City, \$10,000 of 1934. Did Morris Brothers own any of this

(Testimony of A. L. Taylor.)

maturity of the Port of Bay City bonds on December 9, 1920? A. Not to my knowledge.

Q. Can that be ascertained in any way?

A. The only information that I received about that was from Mr. Glenn and from Mr. Pratt. I understood that we were to take up these Bay City's on January first of this year. [128]

Q. Has anyone checked over the Bay City bonds which were on hand at any time between December 9th and the bankruptcy so as to determine whether or not there were any 1934's in stock or owned by Morris Brothers?

A. There were not any 1934's.

Q. Where were the Bonner County bonds referred to on December 9th, 1920, of maturity of 1932?

A. They were at the United States National Bank, Portland, Oregon.

Q. And the 1933 maturities?

A. \$2000 at the United States National Bank and \$1000 at the Seattle National Bank.

Q. And the 1934's?

A. \$4000 at the Seattle National Bank.

Q. And the Fremont Madison School district bonds, \$15,000 from 1933 to 1939 maturities?

A. They were all in the Portland office of Morris Brothers.

Q. In stock? A. Yes.

Q. And the Heyburn-Paul Highway District of Mindoka county, Idaho, \$5000 of 1934?

(Testimony of A. L. Taylor.)

A. \$4000 were in the Portland office of Morris Brothers and \$1000 was in the Seattle National Bank.

Q. And the Rigby Independent School district, #5 of Jefferson County, 1932's?

A. They were at the National Bank of Commerce, Seattle.

Q. And the 1933's Rigby's?

A. National Bank of Commerce, Seattle. [129]

Q. And the Rigby Independents of 1934?

A. National Bank of Commerce, Seattle.

Q. The Buhl Highway district, Twin Falls County, \$10,000 of 1935; where were they on December 9, 1920?

A. \$8000 were with the Central National Bank of Oakland, \$2000 were with the National Bank of Commerce, Seattle.

Q. As you have previously testified all of these bonds you are now referring to which were in the package and set apart for the Hopkins estate and with the Hopkins name on it, were *gather* into the office of Morris Brothers between the 9th of December and the 24th of December? A. Yes.

Mr. HART.—In order that we may be able to make an order in this case, whichever way it goes, correctly—should we not have the specific numbers of all the bonds which were in that package so set apart? Mr. Taylor is able to give us some but he would have to look at the sales slips for the rest.

(Testimony of A. L. Taylor.)

Are you willing he may supply that by sending a note of the numbers to the reporter?

Mr. WINTER.—Yes, that will be all right. Mr. Taylor may write a letter and I will look at it before it is sent to the reporter, and then the reporter may insert it in the record.

Cross-examination by Mr. WINTER.

Q. Looking at that slip there, take the \$3000 Bonner County, Idaho, school districts, 1932 maturity, you say at the time this order was given these bonds were where?

A. At the U. S. National Bank in Portland.

Q. And Morris Brothers did not have possession of them?

A. Not physical possession; no. [130]

Q. What were they doing at that bank?

A. They were up as collateral for a note.

Q. When did they return to the possession of Morris Brothers?

A. Sometime between December 9th and 24th.

Q. How about the \$3000 Bonner County school districts of 1933 maturity; where were they?

A. They were at the Seattle National Bank, Seattle, Washington.

Q. Is it true that these particular bonds at the Seattle National Bank had been sold to that bank on a contract with the understanding that Morris Brothers would buy them back at the request of the bank?

(Testimony of A. L. Taylor.)

A. They were there under a repurchase agreement; yes, sir.

Q. Didn't that repurchase agreement provide that Morris Brothers would buy them back at the request of the bank? A. I believe it did.

Q. It had no provision in it that Morris Brothers had an option to repurchase them?

A. It was not so stated in the repurchase agreement but it was the custom for Morris Brothers to do so.

Q. According to the contract this bank owned the bonds? A. According to the contract.

Q. How about the Bonner County bonds of 1934; where were they?

A. At the Seattle National Bank.

Q. Under the same agreement as the 1933's?

A. Yes.

Q. The next, \$3000 Fremont and Madison counties; where were they?

A. They were in Portland on December 9th.

Q. In the possession of Morris Brothers?

A. Yes. [131]

Q. Did they remain in the actual possession of Morris Brothers from that time until they were put into this separate package? A. Yes.

Q. Did you have all of the \$3000 at that time or just part of them of this district?

A. We had \$15,000 altogether.

Q. You mean \$15,000 of all of the maturities?

A. Yes.

(Testimony of A. L. Taylor.)

Q. What were these maturities?

A. 1935, 36, 37, 38, and 39.

Q. Did you have the entire \$15,000 in your actual possession at the time you took the order?

A. Yes.

Q. Did you have any more than the \$15,000?

A. I might have. I don't remember.

Q. Did you check that at the time to see whether you had more than \$15,000?

A. I was simply verifying to see whether the bonds covered by the Hopkins purchase were covered or not.

Q. You say the entire \$15,000 was in the possession of Morris Brothers at the time you took the order, or the order was taken? A. Yes.

Q. Did they remain there from that time until they were put into this separate package of container? A. Yes.

Q. They were never hypothecated?

A. No. [132]

Q. You don't know whether you had more than \$15,000 or not? A. No.

Mr. HART.—That was the particular thing I wanted you to look up, to find out whether \$3,000 was all you had of each maturity at the time of the sale.

A. There were only \$3,000 of each maturity. I thought Mr. Winter was asking about all maturities. If you refer to these maturities only mentioned in the order, there were only \$3,000 of each of those.

(Testimony of A. L. Taylor.)

Q. Let me get that straight. I referred to the \$3,000 each of 1935, 36, 37, 38 and 39, making \$15,000 in all. I want to know whether you had any more bonds of any of those maturities in stock or whether you owned any more of them at that time? A. No, we did not.

Q. And none of these bonds were hypothecated with any bank or other institution?

A. No.

Q. When were they put into this separate container? A. Between December 9th and 24, 1920.

Q. Were any put into the separate container prior to the 20th of December? A. I think so; yes.

Q. Have you any data over there by which you can testify positively as to that? A. No.

Q. Do you know when you began to set these bonds aside? A. December 9th.

Q. Did you put any in the container on December 9th? A. I did. [133]

Q. At whose direction did you do that?

A. The sale was confirmed by Mr. Glenn and it was customary as soon as a sale was confirmed to begin to fill the order.

Q. Who directed you to do this. Somebody must have told you to do that or you would not have had any knowledge of it. You did not make the sale; they did not give you the order?

A. They gave me the slip, the sales ticket.

Q. You did not make any negotiations on this

(Testimony of A. L. Taylor.)

ticket or on the bonds between these dates when you put them into this container?

A. I made some notations on the ticket.

Q. You made some, as I remember the testimony; you received the check for the bonds on the 22d. Is it your recollection that you took some of these bonds and put them into the separate container prior to the time they were paid for? A. Yes.

Q. So the payment of the purchase price of these bonds had nothing to do with their segregation or setting apart as you have testified? A. No.

Q. You began that work as soon as the order was taken and confirmed? A. Yes.

Q. Wherever you got hold of a bond that went to fill that order you stuck it into the container?

A. Yes.

Q. It didn't make any difference whether you had that bond on hand or got it from some other source?

A. Certainly; that is it.

Q. That covers \$15,000 of the Fremont and Madison bonds; where [134] were these bonds on the 9th of December, 1920?

A. We had \$4,000 in the office and \$1,000 were at the Seattle National Bank.

Q. The \$1,000 at the Seattle National Bank were under that same repurchase agreement or arrangement that you referred to a few minutes ago?

A. Yes.

Q. And \$4,000 were in the office of Morris Brothers at that time? A. Yes.

(Testimony of A. L. Taylor.)

Q. Did they remain in the office until they were put into this separate container? A. Yes.

Q. When you segregated these bonds did you have the entire \$5,000? A. No.

Q. You segregated the \$4,000 and when you got the other \$1,000 you added that to the package?

A. Yes.

Q. At the time you segregated the \$4,000 was it your intention to hold that there until you got the other \$1,000 before you delivered them to the purchaser? A. Exactly.

Q. You wanted to wait until you got them all?

A. Yes.

Q. Now then where were the Rigby Independent School District bonds, \$3,000 1932's, \$4,000 1933's and \$3,000 1934's; at the time you took this order of December 9th the order covered \$3,000 1932's, and at that time you had \$4,000 on hand? [135]

A. Yes.

Q. Do you remember when that segregation was made; when you took the \$3,000 of this \$4,000 you had on hand?

A. No more than that it was between the 9th and the 24th of December. These bonds were not on hand. They were at the National Bank of Commerce, Seattle.

Q. They were there under a repurchase agreement? A. Yes.

Q. Where the bank had the option to compel Morris Brothers to repurchase? A. Yes.

(Testimony of A. L. Taylor.)

Q. And Morris Brothers did not have any right to buy them back under the terms of the contract?

Mr. HART.—We ought to have that contract if you are going to ask questions about it.

Q. Do you remember when you got these bonds back from the Seattle National Bank?

A. Between the 9th and the 24th of December, 1920.

Q. Did you get them in before the 20th of December?

A. Yes, it is possible they came in before the 20th.

Q. And when they came in they were put into this separate container? A. Yes.

Q. How about the other Rigby's, \$4,000 of 1933 maturity?

A. They were at the Seattle National Bank.

Q. Under this same repurchase contract?

A. Yes.

Q. You substituted some other bonds for these and sent them to the Seattle National Bank, did you? [136] A. Yes.

Q. We ought to have that contract?

A. I may find a copy of one of them.

Mr. HART.—Have you any record showing when they were returned from the Seattle National Bank; if you have we ought to have that also.

Q. \$10,000 Buhl Highway District county of Twin Falls, 1935 bonds; where were they?

A. \$8,000 in Central National Bank of Oakland and \$2,000 with the National Bank of Commerce, Seattle.

(Testimony of A. L. Taylor.)

Q. The \$2,000 were under this same repurchase agreement with the Seattle National Bank?

A. With the National Bank of Commerce, yes, sir.

Q. And the \$8,000. They were under a collateral agreement? A. Yes.

Q. How many of these bonds did you have standing out as collateral at the time of taking the order and how many did you have in the office?

A. I had none in the office of the Buhl bonds but I did have \$10,000 out as collateral.

Q. \$10,000 was all that you owned of those bonds?

A. Yes.

Q. Did not own any more of that maturity?

A. No.

Q. Did you have any more than \$10,000 of the Rigby Independent school district bonds?

A. No; we have had more. At that time we had \$21,000.

Q. You had \$12,000 at that time? A. Yes.

Q. And no more than \$12,000? [137]

Mr. HART.—Have you not made a mistake, Mr. Taylor, with respect to the 1932 maturity of the Bonner County bonds? They were not on deposit at the U. S. National Bank, were they?

A. Yes, they were.

Q. I guess you did say that?

A. It was the Rigby's in Seattle.

Q. The 33's and the 34's were in the Seattle National and the 32's in the United States National at Portland hypothecated?

(Testimony of A. L. Taylor.)

A. Only one of the three thousand was at the Seattle National bank.

Q. And the rest?

A. At the United States National in Portland.

Q. All the 32's at the United States National?

A. Yes.

Q. Do you know whether or not between the 9th and the 24th of December, 1920, Morris Brothers acquired any bonds besides those you have testified to that would fill in all the descriptions of the bonds concerning which you have testified?

A. They did not.

Witness excused.

Filed by the Referee, July 12, 1921. A. M. Cannon, Referee in Bankruptcy.

Filed July 19, 1921. G. H. Marsh, Clerk. [138]

Claimant's Exhibit 1—Hopkins.

COPY.

Established Over Quarter Century.

MORRIS BROTHERS, INC.

MUNICIPAL BOND HOUSE

THE PREMIER

Government and Municipal Bonds

Portland, Oregon

Morris Building

309-11 Stark Street

Portland

Portland, Oregon, December 10, 1920.

ESTATE OF A. C. HOPKINS,

Lock Haven, Pa.

Mr. I. A. Shaffer, Jr.,
Lock Haven,
Pennsylvania.

Dear Mr. Shaffer:

Mr. William P. Hopkins was in yesterday and, subject to your acquiescence on the purchases of said bonds, placed with us an order for the following:

PORT OF BAY CITY, 6% bonds,

\$10,000 due 1934

at price to net the estate $61\frac{1}{2}\%$

BONNER COUNTY, IDAHO INDEPENDENT

S. D. #1, $51\frac{1}{2}\%$ bonds

\$3,000 due 1932 \$4,000 due 1934

3,000 due 1933

at prices to net 6%.

FREMONT & MADISON COUNTIES, IDAHO

Joint S. D. #8 6% Gold notes,

\$3,000 due 1935 \$3,000 due 1938

3,000 due 1936 3,000 due 1939

3,000 due 1937

at par and interest to net 6%

HEYBURN-PAUL HIGHWAY DISTRICT of

Mindoka County, Idaho, 6% bonds

\$5,000 due 1934

at par and interest to net 6%.

RIGBY INDEPENDENT S. D. #5, Jefferson

County, Idaho 6% bonds

\$3,000 due 1932 \$3,000 due 1934

4,000 due 1933

at par and interest to net 6% [139]

Shaffer, I. A. 2. 121/10/20

BUHL HIGHWAY DISTRICT, County of Twin
Falls, Idaho 6% bonds

\$10,000 due 1935

at par and interest to net 6%

The bonds above mentioned are to be delivered to you about December 23rd, or 24th, and we are to send the same, via. registered mail insured, addressed to the Estate of A. C. Hopkins, Lock Haven, Pa.

Mr. William Hopkins asked us to mail you copies of the legal opinions on each of the issues above mentioned, together with copies of circulars describing the same, and we are accordingly enclosing same herewith.

A statement for the purchases of these bonds will be mailed to you at a later date and we will have a copy thereof sent to Mr. Hopkins at his address in Spokane.

In conversation with Mr. Hopkins, he stated that he might be interested in taking an additional block of the bonds of the PORT OF BAY CITY and with this in view, we have asked the President of the Port of Bay City to furnish us a map of Tillamook County showing thereon the boundaries of this Port District and also other information, to the end that you can better appreciate the value of the security behind this bond issue.

Under date of November 4th, we addressed a letter to Mr. Hopkins on the PORT OF BAY CITY and for your personal information, we are enclosing herewith a copy thereof.

Thanking you very cordially for the business you have given us, we remain,

Yours very truly,

MORRIS BROTHERS, INC.

By JNO. GLENN,

Vice-president,

Encls.

FG—H.

Filed July 19, 1921. G. H. Marsh Clerk.

Filed October 26, 1921. G. H. Marsh, Clerk.

[140]

Claimant's Exhibit 2—Hopkins.

COPY.

December 15th, 1920.

Morris Brothers, Inc.,

Morris Building,

Portland, Oregon.

Dear Sirs:

Today we received your letter of Dec. 10th, containing a list of the bonds, arrangements for the purchase of which my Co-Trustee, Mr. William P. Hopkins, made with you, subject to the writer's approval. We have also received the descriptive circulars of the several bonds referred to, together with copies of the attorneys' opinions as to the legality of the various issues. The writer, basing his conclusion on the data above referred to, and the fact that Mr. Hopkins went over all these matters in person with your representative, believes the various bonds to be first class, and desirable for the investment of trust funds.

You may therefore ship the bonds described in your letter to us, payment for which will be arranged by Mr. Hopkins.

Very truly yours,
(Signed) I. A. SHAFFER, Jr.,
Trustee, Estate of A. C. Hopkins.

IAS. LR.

Filed July 19, 1921. G. H. Marsh, Clerk. [141]

Claimant's Exhibit 3—Hopkins.

215 Jones Building,
Spokane, Washington, December 20, 1920.
Morris Brothers, Inc.,
Morris Building,
Portland, Oregon.

Gentlemen:

Enclosed you will find my check, as Trustee of the Estate of A. C. Hopkins, for \$61,000.00 to apply on a purchase of municipal bonds made from you on December 9th. Upon receipt of this check please send me an exact statement of our account and if there is any considerable balance due you, I will send you another check. If there is no considerable balance, I will ask you to send the securities on to Mr. Shaffer at Lock Haven, Pa. and let him remit any small balance direct. You will understand that I do not wish to concern myself with the checking of interest and the like here. Mr. Shaffer has an office force in Lock Haven which takes care of that. What I wish to do is simply to pay you in round numbers and have any small difference adjusted from Lock Haven and also to have all interest

figures and the like checked there and of course any necessary adjustments made between you and the Lock Haven office.

Yours very truly,

(Signed) WM. P. HOPKINS.

WPH. BB.

Filed July 19, 1921. G. H. Marsh, Clerk. [142]

Claimant's Exhibit 4—Hopkins.

COPY.

January 5, 1921.

Mr. W. D. Whitcomb, Receiver,
Morris Brothers, Incorporated,
309 Stark Street, City.

Dear Sir:—

The estate of A. C. Hopkins early in December negotiated with Morris Brothers for the purchase of the following Bonds:

PORT OF BAY CITY, 6% bonds.

\$10,000 due 1934.

at price to net the estate $6\frac{1}{2}\%$.

BONNER COUNTY, IDAHO INDEPENDENT

S. D. #1, $5\frac{1}{2}\%$ bonds

\$3,000 due 1932 \$4,000 due 1934

3,000 due 1933

at prices to net 6%.

FREMONT & MADISON COUNTIES, IDAHO,

Joint S. D. #8

6% Gold Notes.

\$3,000 due 1935 \$3,000 due 1938

3,000 due 1936 3,000 due 1939

3,000 due 1937

at par and interest to net 6%

HEYBURN-PAUL HIGHWAY DISTRICT of
Mindoka County, Idaho

6% bonds.

\$5,000 due 1934

at par and interest at net 6%

RIGBY INDEPENDENT, S. D. #5 JEFFER-
SON COUNTY, Idaho

6% bonds.

\$3,000 due 1932 \$3,000 due 1934

4,000 due 1933

at par and interest at net 6%

BUHL HIGHWAY DISTRICT, County of Twin
Falls,

Idaho, 6% bonds.

\$10,000 due 1935

at par and interest to net 6% [143]

Mr. W. D. Whitcomb—2.

A purchase agreement was made which was conditioned upon the approval of one of the trustees in Pennsylvania which approval was thereafter given and on December 20, there was transmitted from Spokane the sum of \$61,000.00 to apply on the purchase price of the bonds. We understand that a large part of the bonds purchased were in San Francisco and were ordered up by telegraph, and were thereafter received and preparations made to deliver them to the Hopkins estate together with a check for a small amount of overpayment.

We have no doubt you will find that these bonds do not appear under the general assets of Morris Brothers, but that the records show them to be the property of the Hopkins estate. This letter is

written to indicate to you that the Hopkins estate will make claim for the delivery of the bonds.

Yours truly,

(Signed) CAREY & KERR.

CAH—DB.

Filed July 19, 1921. G. H. Marsh, Clerk.
[143½]

Claimant's Exhibit No. 5—Hopkins.

COPY.

Established Over Quarter Century

MORRIS BROTHERS, INC.

Municipal Bond House

THE PREMIER

Government and Municipal Bonds

Portland, Oregon

Morris Building

309-11 Stark Street

Portland

January 6, 1921.

(Stamp

(Jan. 8, 1921.

(Carey & Kerr.

Carey & Kerr,

1410 Yeon Bldg.,

Portland, Oregon.

Dear Sirs:

Receipt is acknowledged of your letter of the 5th instant, outlining the status of affairs between the Estate of A. C. Hopkins and Morris Bros., Inc.

136 *William P. Hopkins and I. A. Shaffer, Jr.*

I thank you for the information contained therein.

Very truly yours,

W. D. WHITCOMB,

Receiver in Bankruptcy.

WDW: FB.

Filed July 19, 1921. G. H. Marsh, Clerk. [144]

Trustee's Exhibit "A"—Hopkins.

MORRIS BROTHERS, INC.

Municipal Bond House,

Government and Municipal Bonds,

Morris Building, 309-11 Stark Street.

Portland, Oregon.

No. 3 Central Building,

Ground Floor,

Seattle.

Merchants National Bank Building,

San Francisco.

Portland, Oregon, December 22nd, 1920.

Mr. William P. Hopkins,

215 Jones Bldg.,

Spokane, Wash.

Dear Sir:

We have received your letter of December 20th inclosing check for \$61,000, and pursuant to your request inclose herewith itemized statement covering the bonds purchased from us on December 9th.

If you find the same in due order kindly advise us and we will make prompt shipment to Mr. Shaffer at Lock Haven, Pa.

Awaiting your further advices in connection with this matter and assuring you of our apprecia-

tion of this splendid business, we beg to remain,

Yours very truly,

MORRIS BROTHERS, INC.

By JOHN L. ETHRIDGE,

President. S.

JLE—CS. [145]

COPY of

No. 25953.

Trustee's Exhibit A—Page 2—Hopkins.

MORRIS BROTHERS INC..

Sold to

Estate of A. C. Hopkins,

Lock Haven, Pa.

Portland, Oregon, 12/22/20.

	\$10,000	JEFFERSON COUNTY, IDAHO	
		RIGBY I. S. D. #5 6% Bonds	
		Dated May 15, 1909. Par	\$10,000.
#9/11	3,000	Due May 15, 1932	
#13/16	4,000	Due May 15, 1933	
#17/19	3,000	Due May 15, 1934	
		Int. from 11/15/20 to 12/21/20	60.
	\$10,000	BUHL HIGHWAY DISTRICT 6% BONDS	
		Dated January 1, 1918	
#256/7 261		Due January 1, 1935. Par	10,000.
		Int. from 7/1/20 to 12/21/20	285.
	\$5,000	HEYBURN PAUL HIGHWAY DISTRICT MINIDOKA COUNTY 6% BONDS.	
#91/15		Dated April 1, 1919	
		Due April 1, 1934. Par	5,000.
		Int. from 7/1/20 to 12/21/20	142.50
	\$15,000	FREMONT MADISON COUNTIES IDAHO J. S. D. #8 6% Bonds	
		Dated June 1, 1919	
#11/13	3,000	Due June 1, 1935	
14/16	3,000	Due June 1, 1936	
17/19	3,000	Due June 1, 1937	
20/22	3,000	Due June 1, 1938	
23/25	3,000	Due June 1, 1939. Par	15,000.
		Int. from 12/1/20 to 12/21/20	52.50

138 *William P. Hopkins and I. A. Shaffer, Jr.*

	\$10,000	BONNER COUNTY IDAHO I. S. D.		
		#1 5% Bonds		
		Dated July 1, 1919		
#16/18	3,000	Due July 1, 1932	95.65	2,869.50
24/26	3,000	Due July 1, 1933	95.42	2,862.60
29/32	4,000	Due July 1, 1934	95.20	3,808.00
		Int. from 7/1/20 to 12/21/20		261.25
	\$10,000	PORT OF BAY CITY OREGON 6% BONDS		
		Dated May 1, 1919		
		Due May 1, 1934	95.50	9,550.00
		Int. fro 7/1/20 to 12/21/20		285.00
		Credit by draft	\$61,000.00	\$60,176.35
		Bal due from Morris Bros.	823.65	
			<hr/>	
			\$60,176.35	

Filed July 19, 1921. G. H. Marsh, Clerk. [146]

AND, to wit, on the 26th day of October, 1921,
there was received from the Referee in Bank-
ruptcy and duly filed in said court testimony
and exhibits taken upon the rehearing, in
words and figures as follows, to wit: [147]

In the District Court of the United States for the
District of Oregon.

In the Matter of MORRIS BROTHERS. INC., in
Bankruptcy.

In the Matter of the Claim of the Estate of A. C.
HOPKINS Against the Bankrupt Estate.

Testimony on Rehearing.

At this time, to wit, in the afternoon of Sep-
tember 8, 1921, the above matter came on for
hearing before Honorable Anderson M. Cannon,
Referee in Bankruptcy, on the order of the Dis-
trict Court of the United States for the District of
Oregon, for the purpose of taking further testi-
mony herein to be offered by the claimant.

The bankrupt appeared by its counsel, Mr. John M. Winter, and the claimant by Mr. Charles A. Hart, its attorney.

Thereupon the following proceedings were had and testimony taken: [148]

Testimony of William P. Hopkins, for Claimant.

WILLIAM P. HOPKINS, called as a witness and sworn, was examined and testified as follows:
Direct Examination by Mr. CHARLES A. HART.

Q. Your name is William P. Hopkins?

A. Yes, it is.

Q. You are one of the members of the A. C. Hopkins Estate? A. Yes.

Q. Were you the representative of the Hopkins estate who negotiated with Morris Brothers, Inc. on December 9, 1920, for the purchase of certain bonds? A. Yes.

Q. With whom did you talk about that purchase of bonds? A. With Mr. Glenn.

Q. With Mr. Fred Glenn? A. Yes.

Q. What was the reason for your coming to Portland; did you come for the purpose of purchasing the bonds?

A. Yes, I came especially for that purpose and after that I went to Seattle and bought some bonds from Carstens & Earles.

Q. How did your conference with Mr. Glenn begin?

A. I had had some correspondence with Mr. Glenn. I have never met him before, and then I came on to Portland and was introduced to him,

(Testimony of William P. Hopkins.)

and I went over to his office to see him about the bonds.

Q. Did you go over with him the list of bonds that Morris Brothers had for sale?

A. I did with him.

Q. How was this list prepared if you remember?

A. It was in their regular circular pamphlet, a comprehensive [149] list. The bonds that were sold from that issue in the pamphlet were marked off with a pencil, and it was an up-to-date list.

Q. It was a list or purported to be a list of the bonds that Morris Brothers then had for sale?

A. Yes.

Q. Was there any information given you then as to whether or not any of these bonds were out of the possession of Morris Brothers?

A. No, nothing was mentioned about that.

Q. No information was given you that any of the bonds had been hypothecated anywhere?

A. Nothing.

Q. Did this conference with Mr. Glenn continue throughout that day, Mr. Hopkins?

A. We stayed in conference until lunch-time, that was perhaps an hour and a half; and then we went out and had lunch and after lunch we went in an automobile and looked over Multnomah Drainage District. They wanted to sell me some bonds of the Multnomah Drainage District so they took me out there. Then we came back, I went to the Northwestern National Bank to see Mr. Lamping and he had gone out. That took twenty

(Testimony of William P. Hopkins.)

minutes or so, and then I went down again to Morris Brothers' office and saw Mr. Glenn again, and possibly it was five o'clock, or a little after, when I gave him a definite selection of the bonds.

Q. Up to five o'clock you had not indicated what bonds you were going to take?

A. No, I had not definitely told him the bonds I would take. [150] At that time I told him definitely which bonds I would take.

Q. You say you went down late that afternoon and gave him the definite order?

A. Yes, at that time, about five o'clock.

Q. Did you make up a pencil list of the bonds that you wanted or did you just indicate on the list of Morris Brothers the ones you wanted?

A. As I say, I had this list of Morris Brothers and I just made pencil notations on that list. I think Mr. Glenn made a pencil notation.

Q. You have seen a letter written by Mr. Glenn to Mr. Shafer dated December 10, 1920; did you later secure a copy of that letter? A. Yes.

Q. And is the list specified in that letter the same list that you selected?

Mr. WINTER.—I object to the question as asking the witness to give a conclusion.

Mr. HART.—I will withdraw the question.

Q. Now, Mr. Hopkins, what, if anything, was said at this time by you and Mr. Glenn or in conversation with Mr. Glenn as to the time or manner of payment and the time or place of delivery of the bonds?

(Testimony of William P. Hopkins.)

Mr. WINTER.—I object to that question; it connects up with the statute of frauds, and for the further reason that the record in this case shows that that talk was merely tentative and that the real deal was afterwards made by letter between Morris Brothers and the Hopkins estate.

Mr. CANNON.—The testimony will be received subject to the objection. [151]

Thereupon the last question was read to the witness.

A. I said to Mr. Glenn that we would have some funds in about the 23d or 24th of December with which to take up these bonds, and Mr. Glenn said, "Do you want the bonds sent to Lockhaven with sight draft attached?" and I said, "No, I don't. I want to send the money here and take the bonds up here" and he said, "All right."

Q. Did you indicate to him at that time how you expected to receive the funds, that character of the payment that was coming to the estate?

A. Why, I don't remember about that. I think I told him it was an acceptance. I think I mentioned that to him. Anyway I told him we were going to get the money or would have the money in and that I would send it to Morris Brothers at Portland.

Q. Did you make any statement to Mr. Glenn as to what you wanted done with the bonds after they were paid for?

Mr. WINTER.—All this testimony is subject to my objection.

(Testimony of William P. Hopkins.)

Mr. CANNON.—Yes.

A. I told him after the bonds were paid for he was to send them to Mr. Shafer at Lockhaven.

Q. Now, you subsequently made payment, as the record, I think, already indicates?

Mr. WINTER.—There is no controversy about that, unless you want to couple it up with some other testimony.

Q. Was anything further said in this conversation with Mr. Glenn, or at any time during the day—the 9th of December— [152] as to how and where the delivery of the bonds was to be made?

A. No, there was nothing further said that I can now remember.

Q. Have you *give* the conversation as fully as you recollect it, or the substance of it?

A. As fully as I can recollect it, yes.

Cross-examination by Mr. WINTER.

Q. At the time you had this conversation with Mr. Glenn you told him that any arrangement you made at that time was tentative and was subject to the approval of your cotrustee?

A. Only as to the bonds themselves, yes, that it would not be binding on the estate until the approval of Mr. Shafer was received.

Q. And you saw the letter that Mr. Glenn wrote to Mr. Shafer?

A. I have since seen a copy of it.

Q. Did you see a copy of it before you sent in

(Testimony of William P. Hopkins.)

the money? A. I don't remember that I did.

Q. Do you remember that you did not?

A. I am not positive that I did see a copy of it.

Q. Will you fix the time as near as you can when you first saw the letter marked "Claimant's Exhibit One" and here in evidence?

A. I won't say positively as to that. It seems to me I got a copy of it after the trouble came up, but I can't say positively as to that.

Q. You also have seen Claimant's Exhibit Two?

A. Yes. [153]

Q. When did you first see that?

A. That was received by me in the due course of mail after it was written, I suppose about the 19th or 20th—I would say the 20th of December.

Q. In other words, when your cotrustee, Mr. Shafer, wrote to Morris Brothers Claimant's Exhibit Two he made a carbon copy and sent it to you?

A. He sent me a carbon copy of that letter; yes, sir.

Q. And that was mailed to you at the time it was written? A. Yes, I think it was.

Q. And you had that before you, the carbon copy of that letter, at the time you made payment for the bonds?

A. I made payment on the 20th and I think I had that letter.

Q. You had read this letter Claimant's Exhibit Two at that time? A. I think I had.

(Testimony of William P. Hopkins.)

Q. Your cotrustee had authority to write that letter?

A. Yes. I understood that letter to be merely a direction and I would arrange the terms of payment and that the bonds would be sent to him as arranged by me after payment had been made.

Q. You say that your memory now serves you that at that time you said that you would make payment for the bonds here? A. Absolutely.

Q. Had you seen any of these bonds?

A. No, sir.

Q. Never saw any of them? A. No. [154]

Q. Did you see any of them at the time you carried on your negotiations with Mr. Glenn?

A. I did not see the bonds.

Q. You just saw a list of the bonds?

A. Yes, just as I always do when I buy bonds.

Q. You have had considerable experience in buying bonds?

A. I have bought bonds quite a few times.

Q. If these bonds had been irregular or anything wrong about them you would have rejected them, would you not?

Mr. HART.—That is calling for the conclusion of the witness.

A. I presume I would have had a case against them on the ground of fraud of some kind; I don't know. That would be my supposition.

Q. That is your supposition. At the time you told Mr. Glenn that you would send the money and

(Testimony of William P. Hopkins.)

later take up the bonds here, did you intend at that time to come here personally and get these bonds? A. I did not.

Q. Did you tell Mr. Glenn that you would send the money here and take up the bonds here?

A. Yes.

Q. Just what did you mean by that?

A. Just that; that I would send the money and take the bonds here, in Portland.

Q. And you were not coming here yourself to take them? A. No.

Q. How were you to take them here?

A. I was to send the money here for the bonds and they were to send them to Mr. Shafer. [155]

Q. How did they send them?

A. Through the mail.

Q. How did they send them through the mail, just put them in an ordinary envelope?

A. No, they would not do that; the custom was to send them by registered mail insured.

Q. Insured in whose name? A. I don't know.

Q. Had you ever bought any bonds from Morris Brothers before this time?

A. Yes, I had bought bonds of them before.

Q. And had they sent them to Mr. Shafer?

A. Yes.

Q. By registered mail? A. I presume so.

Q. And they were insured?

A. I presume they were.

Q. And you wanted these bonds sent just the same as the others had been sent?

(Testimony of William P. Hopkins.)

A. Yes, and I presume that was their regular way.

Q. You say that was the instructions you gave Mr. Glenn?

A. I did not tell him that. I say I presume that was the way they would send them. That is my supposition.

Q. You told him you wanted them to be sent by mail the same as the other lot of bonds?

A. I did not tell him that; I presumed he would do that.

Q. What you said to Mr. Glenn was that these bonds were to be sent to Mr. Shafer the same as they had theretofore sent the other bonds you had bought from them? [156]

A. I don't remember that I said that to him. I presumed he would send them that way.

Q. Do you remember saying anything with regard to that?

A. I don't positively remember.

Q. Do you remember when you had the conversation with Mr. Glenn, saying that these bonds should be sent to Lockhaven the same as the other bonds? A. I do not remember saying that.

Q. Do you say that you did not say that?

A. I do not remember whether anything was said about that or not.

Q. Upon that point you have no recollection one way or the other? A. No.

Q. And if Mr. Glenn should testify that you had

(Testimony of William P. Hopkins.)

that conversation, so far as your memory goes that might be right?

A. If he should testify positively that he remembers I said that I would think there would be no doubt about it.

Q. At the least at that time they were going to send the bonds to you the same as they had sent the other bonds which you had bought previous to that; that would be your understanding?

A. Yes, that would be my impression.

Q. And when you said you would send the money and take the money up here and take them up here you meant that they were to be shipped to Lockhaven?

A. No, I did not. I meant that we would take them up here; that they would be paid for here.

Q. Have you testified to everything that was said with relation to the shipment or the delivery of the bonds between [157] you and Mr. Glenn, or between you and any other officer or member of Morris Brothers—in regard to the delivery of the bonds?

A. I had no conversation with anyone else.

Q. You have stated all the conversation you had with regard to the delivery of the bonds with Mr. Glenn? A. I believe I have.

Q. As you now recollect it? A. Yes, I think so.

Redirect Examination by Mr. HART.

Q. You say you told Mr. Glenn you would be ready with your money by December 23d?

(Testimony of William P. Hopkins.)

A. Yes, or 24th.

Q. Or 24th? A. Yes.

Q. And that you would not want the bonds sent with sight draft attached to Lockhaven, but that you intended to make payment and take them up here? A. Yes.

Q. What did you mean by paying and taking up?

A. I meant they were to be paid for, and as I understood it, the purchase closed here.

Mr. WINTER.—I move to strike out the last answer as not responsive and as a conclusion of the witness.

Mr. HART.—You asked him what he meant.

Mr. WINTER.—It is proper for me to ask that but not for you. I am cross-examining him.

Mr. HART.—I think I have a right to ask what he meant also.

Mr. WINTER.—I don't think you have and I object [158] to the question.

Mr. CANNON.—I am not going to stand on technicalities and bar out any testimony. I doubt very much that it is controlling. The question is as to what is the result of what took place between these parties and that is properly a question to be decided by the court.

Q. (Mr. HART.) Did you or did you not make any request of Mr. Glenn at any time that he should put in writing by form of letter to Mr. Shafer, or otherwise, the whole contract that you had made?

A. I did not. I told him, or asked him to send a description of the bonds and the legal opinion to

(Testimony of William P. Hopkins.)

Mr. Shafer, and I went over to the hotel afterwards and sent a list to Mr. Shafer so he would have my list to check against Mr. Glenn's list.

Mr. WINTER.—Q. Have you got that letter you sent to Mr. Shafer?

A. No.

Q. (Mr. WINTER.) Have you tried to get a copy of it?

A. No.

Q. (Mr. WINTER.) Have you tried to get the original?

A. No, I have not.

Mr. WINTER.—I move to strike out what the witness said about writing to Mr. Shafer.

Mr. CANNON.—If you have a letter of that kind you ought to produce it.

Mr. HART.—Q. Where was the letter written?
[159]

A. In the writing-room of the Portland Hotel. I just wrote it with pen and ink.

Q. (Mr. HART.) You have said that you are not certain as to when you secured a copy of the letter Mr. Glenn wrote on December 10 to Mr. Shafer. Is there any circumstance that you can recall later on which would indicate whether or not you had a copy of that letter prior to the bankruptcy?

A. When I came over here after the bankruptcy I wanted to get you (Mr. Hart) a list of the bonds and I found I did not have a list excepting my notations. In order to get a list of the bonds I tele-

(Testimony of William P. Hopkins.)

graphed to Mr. Shafer for the notes. That is all I can remember that has any bearing on that.

Q. During the conversation with Mr. Glenn did you make any statement to him, or otherwise, that your cotrustee would approve of the selection of the bonds that you had made?

A. I said he always had approved my selections and I would send him a list—that inasmuch as we were acting as cotrustees I wanted him to have a list of the bonds and the legal opinion on the bonds.

Recross-examination by Mr. WINTER.

Q. Are you an attorney at law? A. No, sir.

Q. Have never been admitted to the bar?

A. No.

Q. At the time you received the copy of the letter addressed to Morris Brothers by your cotrustee, bearing date December 15, 1920, did you at that time know of the letter Mr. Glenn had written to your cotrustee which is in evidence here?

A. As I have said I only knew of it as it was referred to in that letter. He acknowledges receipt of it, as you see. [160]

Q. When your cotrustee sent you a copy of this letter, Claimant's Exhibit Two, did he write you a letter?

A. I don't remember as to that, I don't think he did.

Q. Your impression is that he simply enclosed the carbon copy of the letter to you in an envelope addressed to you without any letter at all?

(Testimony of Fred Glenn.)

A. I think so, though there may have been a letter stating that he was enclosing it.

Mr. WINTER.—That is all.

Mr. HART.—That is all.

Witness excused. [161]

Testimony of Fred Glenn, for Claimant.

Mr. FRED GLENN was called as a witness and having been previously duly sworn in this matter was examined and testified as follows:

Direct Examination by Mr. HART.

Q. You were the representative of Morris Brothers, with whom Mr. William P. Hopkins negotiated for the purchase of bonds on December 9, 1920, were you not? A. I was.

Q. How did you put in that day—where did you first meet Mr. Hopkins, and what did you do? Just state briefly.

A. As I recall, Mr. Hopkins came to the office early in the morning about nine o'clock or half-past nine; he came to my office and I discussed with him relative to certain bond issues and methods used for the collection of taxes, etc. We previously had had considerable correspondence and the discussion was merely supplemental to the correspondence I had carried on with him.

Q. What did you do next—did he lunch with you?

A. Yes, we went out to lunch together.

Q. Then what?

A. Then we took an automobile and went out over

(Testimony of Fred Glenn.)

the Multnomah Drainage District; we were figuring on selling them some of the bonds of that district; we were figuring on purchasing some of them and at my suggestion he went out to look over the district. We went out and walked over a part of it. During the automobile ride we discussed relative to bonds in general.

Q. When you returned where did you next see him; what took place next?

A. As I recall, we drove up in front of the Northwestern Bank [162] building and we dropped him there and he said he would probably come down later after he had talked with somebody up there that he knew, and I went on down to the office of Morris Brothers?

Q. Did he come later to the office of Morris Brothers?

A. He came in very shortly afterwards, unexpectedly early. Apparently he was not able to get in touch with the party he was expecting to meet and he got back to our office about five o'clock, or thereabouts, as I remember.

Q. What took place then?

A. Well, we went upstairs to my office and he selected the bonds that he evidently decided in his own mind to purchase.

Q. Up to that time had he indicated definitely what he wanted?

A. No, he had not indicated what he expected or intended to purchase up to that time.

(Testimony of Fred Glenn.)

Q. You say he then made a definite selection of the bonds he would purchase?

A. Yes, he then made the definite selection.

Q. In the morning when you talked over the bonds with him, what was the basis of your talk? I mean by that, did you have before you any list or statement of bonds which Morris Brothers was offering for sale?

A. Not that I recall at all. We did not talk of any specific bonds.

Q. I don't believe you understand me; were you endeavoring to get for him any bonds that he might want, or were you offering him bonds that Morris Brothers had for sale?

A. I really don't remember that we talked of any specific bonds in the morning, and on the ride we just talked of bonds [163] generally. I don't know that I exactly understand your question.

Q. Were you undertaking to act as the agent of Mr. Hopkins to secure for him any bonds wanted by him, or were you endeavoring to sell him bonds of Morris Brothers?

Mr. WINTER.—I object to the question as leading.

Mr. HART.—All right, I will withdraw it.

Q. Did you have before you during your conversation with Mr. Hopkins any *printed* printed, type-written or other list of bonds that Morris Brothers were offering to the general public?

A. As I recall, I had no list during the morning session. When we went out in the automobile, at

(Testimony of Fred Glenn.)

Mr. Hopkins suggestion—he said, “you had better take along a list of what you have and we can go over it and talk about them to and from the end of the ride,” so I got one of our regular circulars describing a number of issues that we had available for sale.

Q. Did you indicate to Mr. Hopkins at any time that any of these issues that were available for sale were not then in the possession of Morris Brothers?

A. No.

Q. Or that any of them were hypothecated to banks? A. No.

Q. Did you know yourself at that time what, if any of them, were not actually in Morris Brothers' possession?

A. I did not know. That was not in my department and I would not be in touch with that part of the business.

Q. Now, Mr. Glenn, at the five o'clock meeting you say that Mr. Hopkins definitely indicated the particular bonds that he proposed to purchase? [164]

Mr. WINTER.—I object to the question as leading and suggestive.

Mr. HART.—I only wanted to ask him further about what he has already testified to.

Mr. CANNON.—I think it is leading.

Question withdrawn.

Q. At that time, Mr. Glenn, state what, if anything, was said regarding the necessity for securing the approval of Mr. Hopkins' cotrustee, Mr. Shafer.

A. Mr. Hopkins explained that he and Mr. Shafer

(Testimony of Fred Glenn.)

were cotrustees of the estate for which the bonds were purchased. He stated that usually Mr. Shafer was willing to acquiesce in anything he saw proper to recommend; however, inasmuch as he was the cotrustee of the estate, he would want his acquiescence before an actual sale was made; that is, the sale was made subject to Mr. Shafer's approval.

Q. What directions, if any, did Mr. Hopkins give you at that time with reference to advising Mr. Shafer of the bonds selected by Mr. Hopkins?

A. He asked me to send Mr. Shafer circulars on each of these issues, and also to send him, as I recall, legal opinions on each issue; that is copies of the legal opinions on each issue.

Q. Did you do that, Mr. Glenn?

A. As I recall, I did.

Q. And is this letter of December 10th which you wrote to Mr. Shafer, and which is in evidence here, the letter with which you transmitted such information?

A. I will have to look at the letter. (Witness looks at the letter.) [165]

Q. Is that the letter?

A. Yes, this is the letter which is marked Claimant's Exhibit One.

Q. I call your attention, Mr. Glenn, to the statement in this letter, Claimant's Exhibit One, to the effect that "the bonds above mentioned are to be delivered to you about December 23d or 24th, and we are to send the same via registered mail," and I ask you what, if anything, was said to you by Mr. Hop-

(Testimony of Fred Glenn.)

kins on December 9th concerning the delivery or payment on December 23d or 24th?

Mr. WINTER.—I object to that question as coming within the statute of frauds, and furthermore that the agreement between the Hopkins Estate and Morris Brothers at that time was reduced to writing and is contained in the two letters marked Claimant's Exhibits 1 and 2 herein and any oral conversation had prior thereto would be merged in the agreement.

Mr. CANNON.—You may answer subject to the objection.

A. During the afternoon Mr. Hopkins stated that he expected to receive a considerable sum of money from an acceptance which would be paid on or about that time,—or within a couple of weeks from the time of our conversation. As I recall, I asked him relative to the delivery of the bonds and he stated that he would send a check to Morris Brothers for an amount sufficient to take up all of the bonds and that possibly there would be a few hundred dollars in excess of the amount necessary to pay for the bonds inasmuch as we could not figure; we did not at that time know how much accrued interest there would be on the bonds. [166]

Q. You mean by that the interest according to the coupons on the bonds?

A. Yes.

Q. You could not tell, if I may ask this leading question, until you knew the date of payment, how

(Testimony of Fred Glenn.)

much accrued interest there would be to add to the purchase price? A. That is right.

Q. And he said—

A. He said, if there was an excess you can either return it or we can arrange between us to take another bond.

Q. Did you make any notes or memorandum at that time of this transaction—of this purchase?

A. Yes, I made memoranda so I would be enabled to write a letter.

Q. Was that memoranda made during the time of your conversation? A. Yes.

Q. I show you seven sheets of pencil notations on white paper and ask you if these sheets constitutes the memoranda that you made at that time?

A. Yes.

Thereupon the claimant offered the said sheets identified by the witness in evidence and the same were marked “Claimant’s Exhibit Six.”

Q. These notes are in your own handwriting, are they, Mr. Glenn? A. Yes.

Mr. WINTER.—We object to the offer of these papers as exhibits in this case on the ground that they are incompetent, irrelevant and immaterial, and that they [167] come within the statute of frauds and that they cannot be offered to vary the agreement made between the parties as contained in Claimant’s Exhibits 1 and 2, and further, that no foundation has been laid for the memoranda or the offer thereof.

Mr. HART.—On the ground of “foundation”—

(Testimony of Fred Glenn.)

were these notes made during the time of your conversation with Mr. Hopkins, Mr. Glenn?

A. They were.

Q. And they are in your own handwriting?

A. Yes, they are.

Mr. HART.—I submit the papers as an exhibit.

Mr. CANNON.—They may be received as an exhibit subject to the objection.

Q. Mr. Glenn, I call your attention to the first statement on this memorandum, which says: "Will arrange to take up about Dec. 23-24." What brought about the making of that note?

A. What brought about the making of that note?

Q. Yes.

Mr. WINTER.—We wish our objection to apply to all testimony relative to this exhibit six.

Mr. CANNON.—That is understood.

A. Mr. Hopkins indicates that the money would be received by them about that date.

Mr. WINTER.—We object to what Mr. Hopkins "indicated." [168]

A. (Continued.) Mr. Hopkins said the money would arrive about the 23d or 24th.

Q. The next item of the exhibit is, "Make all statements to Lockhaven—send copy to Spokane. He will send check to cover." Is there any explanation that you make in regard to what that means?

A. It means that the bonds should be billed to Lockhaven and copy of the bill should be sent to Spokane.

Q. Then I call your attention to the note on the

(Testimony of Fred Glenn.)

next page reading, "Send circular and copy of attorney's opinion. Get off tomorrow."

A. Yes. That means we were to send a copy of the attorney's opinion on each issue purchased with the circular describing the bond issue.

Q. Now, what, if anything, was said by Mr. Hopkins as to what was to be done with the bonds after they were paid for?

A. They were to be sent to Lockhaven to the Hopkins Estate.

Q. Will you give as nearly as possible what was said on that subject by Mr. Hopkins?

A. My recollection is that I was merely instructed to send the bonds or cause the bonds to be sent to Lockhaven.

Q. Can you say whether or not that instruction followed or preceded Mr. Hopkins' statement that he would be ready to pay for and take up the bonds about December 23d or 24th?

A. I think it followed,—in fact, I rather think that it was towards the end of the conversation regarding it—the transaction for the purchase of the bonds—now, let me see, what is that question again.

Question read as follows: "Can you say whether or not that [169] instruction followed or preceded Mr. Hopkins' statement that he would be ready to pay for and take up the bonds about December 23d or 24th?"

A. I rather think it followed. Can I amend my answer?

Q. Just make any statement you want?

(Testimony of Fred Glenn.)

A. That this would merely be a service that Morris Brothers would perform under any circumstances.

Mr. WINTER.—I move to strike out the answer as giving a conclusion and opinion of the witness and it has no bearing on the case and is not responsive to the question.

Mr. CANNON.—I think it is not responsive to the question.

Mr. HART.—It is not responsive, of course. It is merely to convey to the referee what Morris Brothers would do under any circumstances. I can ask another question, if you want me to.

Mr. WINTER.—The objection is clear. You can ask any other question you desire.

Mr. CANNON.—I don't think that statement really has any bearing on this contract. It is not material. The question is, what these people agreed to do.

Mr. HART.—Of course all we want is to show the referee exactly what took place, and this would obviously be of some assistance in showing the methods used by Morris Brothers in handling such a transaction, but I will ask Mr. Glenn some other questions. [170]

Q. (Mr. HART.) What was the usual method of Morris Brothers at that time in respect of the forwarding of bonds purchased after they had been fully paid for?

Mr. WINTER.—We object to that question as immaterial, incompetent and irrelevant and has no

(Testimony of Fred Glenn.)

bearing on the allegations of the petition, and that the contract which was reduced to writing is clear and free from ambiguity and could not be varied by custom.

Mr. HART.—Let me suggest that we have already had testimony from other witnesses on this same subject.

Mr. CANNON.—It has been gone over, I think, before, and I do not want to keep any testimony out, so you may answer subject to the objection.

Questions read as follows: “What was the usual method of Morris Brothers at that time in respect of the forwarding of bonds purchased after they had been fully paid for?”

A. I believe they were usually sent by registered mail; in fact, I am sure they were.

Q. Was there anything said during any of these conversations about making formal delivery of these bonds at Lockhaven?

A. Nothing further, as I recall, excepting that the bonds were to be sent to Lockhaven.

Q. Was there any statement at any time or any request or question as to whether or not the bonds were to be forwarded to Lockhaven, sight draft attached, or were to be taken up in Portland?

A. I did not get that. [171]

Last question read as follows: “Was there any statement at any time or any request or question as to whether or not the bonds were to be forwarded to Lockhaven, sight attached, or were to be taken up in Portland?”

(Testimony of Fred Glenn.)

Mr. CANNON.—What he wants to know is this: Was anything said or any agreement entered into as to whether the bonds were to be sent to Lockhaven or whether they were to be taken up here?

A. The bonds were to be paid for here in Portland and merely sent to Lockhaven. There was no sight draft to be attached because they had already been paid for.

Q. (Mr. HART.) Did you ask Mr. Hopkins in in the first instance as to whether or not the bonds were to be sent to Lockhaven sight draft attached?

Mr. WINTER.—That is clearly leading.

Question withdrawn.

Cross-examination of Mr. GLENN by Mr. WINTER.

Q. Mr. Glenn, what was the name of the representative of this Hopkins Estate that you saw?

A. Mr. Hopkins. I don't know what his initials are.

Q. You don't know his initials?

A. I don't recollect his initials.

Q. Had you ever seen him before that day?

A. Never had.

Q. Had he ever bought any bonds from Morris Brothers before that time?

A. Morris Brothers had sold him some. I personally had not. [172]

Q. Do you remember when that sale was made?

A. About two or three months before. It must have been thirty days before anyway or maybe sixty

(Testimony of Fred Glenn.)

days; at any rate, we were very much surprised to receive thirty to forty thousand dollars through the mail,—a check for that amount. It was quite a surprise.

Q. You sold them \$40,000 worth of bonds before this? A. Yes, Morris Brothers did.

Q. How were those bonds delivered?

Mr. HART.—Let me caution the witness to testify only to what he knows of his own knowledge and not what he learned from somebody else.

Mr. WINTER.—He has testified they bought the bonds.

Mr. HART.—You may ask him what the occasion was, if he knows.

Mr. WINTER.—I am cross-examining him on your direct examination.

Mr. HART.—I simply desire to have him advised that he can only testify to what he knows personally. Go ahead.

The WITNESS.—What is the question?

Q. (Mr. WINTER.) How were these forty thousand dollars of bonds delivered?

A. In the ordinary way; the usual method of delivering bonds, I presume. I am not conversant with how that particular lot of bonds were delivered.

Q. You don't know anything about that?

A. Not more than the ordinary method. [173]

Q. Do you know anything about how those particular bonds were delivered?

A. I don't know; no, sir.

(Testimony of Fred Glenn.)

Q. Did you have any information about that at the time you talked to Mr. Hopkins?

A. About the delivery of the bonds?

Q. The delivery of the bonds they had bought before that time?

A. No, sir, I had nothing to do with that sale.

Q. Did you talk to Mr. Hopkins about the delivery being made of these bonds the same as the other bonds they had bought, that the delivery would be the same? A. I did not.

Q. Are you positive about that?

A. Never had any business with Mr. Hopkins except by correspondence before this.

Q. In this conversation that you had with Mr. Hopkins at that time, at the time this preliminary arrangement was made for the purchase of these bonds in controversy, was anything said that they were to be shipped the same as the other bonds which they had bought from Morris Brothers?

A. I do not recall any such instructions.

Q. You don't recall any such instructions?

A. No.

Q. On the second sheet of Claimant's Exhibit Six you have a memorandum to this effect—"Ship bonds to Est. of A. H. Hopkins, Lockhaven, Pa." Is that right? [174] A. Yes.

Q. And you made this memorandum just as you were talking with Mr. Hopkins? A. Yes.

Q. And therefore this memorandum or statement that the bonds were to be shipped to the Estate of A. H. Hopkins, Lockhaven, Pa., that matter was

(Testimony of Fred Glenn.)

evidently discussed before anything was said of the different kinds of issues that he was buying?

A. Not necessarily.

Q. Then you did not make these notes as the conversation occurred?

A. They may not now be arranged in the order that I made them.

Q. Would you arrange them in the order they were made?

A. I could not place them in the order they were made. Just a minute let me see the sheets.

Mr. HART.—Did you not change the order of the sheets, as I am sure this was on the top.

Mr. WINTER.—No, I did not change their order. The reporter marked this one on the bottom.

Mr. HART.—I thought you had changed them as I noticed your looking through them.

Mr. WINTER.—No, I did not change them.

Mr. HART.—Then I owe you an apology.

Mr. WINTER.—That is all right. May I be permitted to go ahead with my examination? Have you any further answer to make to my last question, Mr. Glenn?

A. As I recall it now, there was no discussion until after the bonds were purchased; naturally there wouldn't be any. [175]

Q. Would you place these sheets in the order that you made the memoranda?

A. I would have to take the pamphlet of Morris Brothers from which the selection was made; we sat across the table from each other and each had a

(Testimony of Fred Glenn.)

pamphlet and we started at the first of it and he says, "I will take so many of each one of these issues," and along like that, and I made a memorandum as he indicated the bonds he would take. In other words, the plan made of this memorandum would be the selection that he made.

Q. On your part you had a list which you used?

A. I had what we called our bulletin containing a description of the bonds available for sale at that time.

Q. Containing a list of the bonds?

A. With a description of the various issues.

Q. You did not have any particular bonds before you at the time you talked to him? A. No.

Q. Mr. Hopkins did not examine any bonds at all? A. No.

Q. He did not see any bonds at all? A. No.

Q. He did not examine any of the bonds as to the validity of the bonds? A. No.

Q. Some of the bonds had not been issued at that time?

A. I think every bond had been issued but some of them had not yet been taken up.

Q. Part had not been taken up? Had the Bay City bonds been issued?

A. They had been issued but not paid for. [176]

Q. Had not been received by Morris Brothers?

A. Certain parts of the bonds, of the \$260,000 issue up to fifty to sixty thousand had been taken up and they wanted to deliver them to us; they were pressing us to take delivery at that time. Those

(Testimony of Fred Glenn.)

bonds were not available at that time, of course.

Q. You did not have them at that time?

A. I telephoned to the teller who had charge of the bonds and he stated that they were not on hand at that time?

Q. You telephoned at the time Mr. Hopkins was there? A. I telephoned at that time to find out.

Q. Was Mr. Hopkins present when you telephoned?

A. I don't think he heard the conversation.

Q. Was he present in your room when you telephoned? A. I think he was.

Q. Was he in hearing of what you said?

A. Yes, he sat there across the table from me, he no doubt heard my part of the conversation.

Q. He heard your part of the conversation. How did you happen to call up to ascertain whether these bonds were in the possession of Morris Brothers, or not?

A. I had no information as to what bonds were actually unsold and what bonds had been sold so I had to telephone down to find out what the books showed.

Q. Didn't you know at the time you talked to Mr. Hopkins that a number of these bonds had been hypothecated?

A. I did not know that because I had no intimate knowledge how they ran their finances. [177]

Q. You and Mr. Hopkins did not talk of any specific bond but you talked of bonds of a certain kind? A. We talked about specific maturities.

(Testimony of Fred Glenn.)

Q. But any bond that had that maturity would fill *them* bill?

A. I think so. There were just certain numbers of these bonds left; that is just a certain part of the different issues remained unsold.

Q: The only thing you discussed, you had a list of certain kinds of bonds giving the maturities and a description of the bonds? A. Yes.

Q. And Mr. Hopkins said he would take a certain number of each kind of these particular maturities?

A. He said he would take a certain number of a certain designated maturity and as I remember most of these issues were pretty well cleaned up by his purchase.

Q. The day following this conversation you wrote the letter that is here in evidence as Claimant's Exhibit One, did you not? A. I did.

Q. At the time you wrote that letter the conversation that you had had with Mr. Hopkins was still fresh in your memory and you also had before you the memorandum in evidence made by you and marked Claimant's Exhibit Six? A. I did.

Q. The letter states "the bonds above mentioned are to be [178] delivered to you about December 23d or 24th and we are to send same via registered mail insured addressed to the Estate of A. C. Hopkins, Lockhaven, Pa." You put that statement in that letter? A. Yes.

Q. You had not said anything to Mr. Hopkins about insuring these bonds?

(Testimony of Fred Glenn.)

A. I don't think so. I don't often mention that in a conversation.

Q. Did you in this conversation?

A. I don't think so.

Q. Was there any reference to it at all?

A. Not to my memory; not in accordance with my recollection.

Q. Do you know at this time whether the other shipment of bonds previously sold them was sent insured?

Mr. HART.—He said he did not know anything about it.

Mr. WINTER.—Let him answer.

A. I rather imagine they were but I don't know anything about that transaction.

Q. What was your business with Morris Brothers? A. Buying bonds.

Q. And selling bonds?

A. No, not selling. This was the only sale I made. That is the only sale I ever made for them so far as I recollect.

Q. How did you happen to make that statement in your letter that they were to be sent insured by registered mail?

A. It is the customary method of delivering, the ordinary way of all bond houses so far as I know.

Q. How were they insured; what was the customary method in regard to that? [179]

A. I have no knowledge as to how Morris Brothers insured their bonds; the customary method would be to take out insurance in the name of Mor-

(Testimony of Fred Glenn.)

ris Brothers, or any other bond house for the matter, in delivering bonds.

Q. You say you never sold any bonds except these?

A. That was the only lot of bonds I sold while I was with Morris Brothers.

Q. You have had considerable experience in dealing with bonds? A. Since 1908 constantly.

Q. You have heretofore observed that some times bonds are issued a little irregularly?

A. They have been.

Q. Yes, they have been. You had some experience with the trustee in the sale of bonds that were issued irregularly did you not?

A. Not to my knowledge. I don't know of any bonds that I ever sold that were irregularly issued.

Q. Don't you remember that you or the trustee sold some bonds that were rejected because of some irregularity in delivery?

A. I never saw those bonds. I simply acted as agent for the trustee to facilitate the sale. As I understand it, the bonds had certain endorsements on them which specified that the bonds had been sold to a certain sinking fund and that they had been registered the interest to be paid only to the sinking fund to which these bonds were sold, therefore in order to make the bonds transferable it would be necessary to obtain an annulment of that order.

Q. And therefore it was not a good delivery?
[180]

Mr. HART.—That is a question of law. It is not

(Testimony of Fred Glenn.)

proper cross-examination and calls for a conclusion of law.

Mr. CANNON.—What is this for any way?

Mr. WINTER.—He has testified to what their general custom is in sending out bonds and I have a right on cross-examination to go into that to show it is necessary in the sale of a bond that there is to be a delivery the same as in the sale of anything else.

Mr. CANNON.—You may answer.

Q. Was it a question of law or question of the custom?

A. It was a good delivery and would have been binding upon these people because they took the bonds without any qualification or question as to their character.

Q. And you made a good delivery?

A. Yes. They refused to accept them and there could have been an action brought against these people for breach of contract for they bought them without any qualification whatsoever.

Q. Isn't it a custom between bond sellers and buyers in order to constitute a good delivery that the bonds must be delivered according to certain terms and in accordance with certain regularities?

A. They are ordinarily always accompanied by the opinion of some recognized bond authority attached to the bond issue.

Q. As to the legality of the issue? A. Yes.

Q. I am not talking about that phase. Is it not true that if the bond is not regular, for instance, if

(Testimony of Fred Glenn.)

the coupons are not [181] numbered regularly, that it mars the marketability of that bonds?

A. I would say that they could not be sold at all.

Q. Notwithstanding they might be entirely regular in other respects?

Mr. HART.—I don't think witness understands counsel. The legal opinion of the attorneys always covers such points in the issue as well as to the regularity of the issue. A. Yes; I think so.

Q. You are familiar with the bond issue of Vancouver?

A. Vancouver, Washington, or Vancouver, B. C.?

Q. Vancouver, Washington; are you familiar with that issue? A. I can't say that I am.

Q. Do you know that Morris Brothers bought some of the Vancouver, Washington, bonds?

A. I did not buy them while I was there. I might say that some of the bonds came into Morris Brothers without anybody apparently looking at them consequently they might have taken up some bonds that were not regular or in due order.

Q. You explain this now. Assuming that, for instance, the coupons attached to these bonds were not regularly made out so that coupon number one would become due a year after coupon number two, or six months after, something like that, after the date of the issue; would that affect the marketability of the bonds?

A. I don't think so to any degree, if I understand you.

Q. Not to any degree?

(Testimony of Fred Glenn.)

A. That might be done in order to allow the district or the [182] municipality issuing it to collect their taxes so as to have money to pay the interest coupons.

Q. What I mean is, in numbering the coupons the second coupon to be clipped matured, say, six months before the first one?

A. I never saw any bonds that were issued that way.

Q. I suppose not; I am saying, presuming they had been printed that way?

A. Well, I don't think anybody would buy them; I don't think any bond house would take them. It is a part of their duty to examine the bond issues they are offering for sale to see that all such things are regular.

Q. It is these little irregularities, in numbering and so forth, that causes bond houses to reject them?

A. Not to my knowledge. They are examined before paid for, or should be.

Q. You had a lot of bonds at Morris Brothers that were never examined by anybody?

A. I say that was so and it was the fault of their system of handling the bonds and allowing somebody to take them in that didn't know very much about them, some clerk or somebody.

Q. At the time that you talked to Mr. Hopkins did he say anything to you to the effect that your office had already been advised in the manner of the delivery of these bonds?

(Testimony of Fred Glenn.)

A. I do not recollect whether he said anything like that. He didn't see anybody regarding those bonds excepting myself so far as I know.

Q. Did he say anything to you that your office had already been advised regarding the shipping of the bonds?

A. I do not recall any such instructions or statement. [183]

Q. I hand you a paper and ask you to look at it?

A. I wrote that letter.

Q. Did you write that letter on the date it bears, December 10, 1920? A. Yes.

Q. That was a letter or memorandum for your own use and the use of your office?

A. Use of the office. That is my interpretation of the conversation.

Q. That was written the day after you had this conversation with Mr. Hopkins? A. Yes.

Q. And that was written the same time you wrote a letter which is in evidence as Claimant's Exhibit One? A. I think so.

Q. This memorandum contains the statement that "Mr. Hopkins advises that our office has already received instructions regarding shipping the bonds"—since reading that memorandum is your memory refreshed as to the conversation you had with Mr. Hopkins?

A. No, excepting the bonds were to be sent to Lockhaven, Pa., as I have already stated.

(Testimony of Fred Glenn.)

Q. That is the same as in your own memorandum? A. Yes.

Q. Have you stated everything that you can recollect that was said in regard to the delivering of these bonds?

A. I think so. The whole conversation probably consumed only fifteen or twenty minutes during the time he selected what bonds he bought.

Q. Selected the different kinds of bonds? [184]

A. The whole conversation—he sat right across the table from me and the whole conversation did not consume a period of more than twenty minutes I would judge. Of course these notes were only made in a general way because we never expected to have any questions arising.

Mr. WINTER.—That is all.

Mr. HART.—That is all.

Witness excused.

Mr. HART.—During Mr. Hopkins testimony the other day, his attention was called to a letter which he received from his cotrustee, and I am anxious to have everything that is necessary before this hearing is closed and if you think it important I will procure that letter. Mr. Hopkins has sent for the letter and when he receives it will forward it to me. It would take a matter of a week or ten days.

Mr. WINTER.—I don't know what the letter contains. I remember when Mr. Hopkins testified I said I thought the letter would be the best evi-

dence, but as far as I am concerned I do not care for the letter.

Mr. HART.—I thought you wanted the letter and that you thought it was a matter of some importance, and I am anxious to have anything that I can get which is thought of importance, but so far as I am concerned I do not care to delay or postpone this case for that letter if the Referee does not want it. Aside from that letter the claimant does not desire to offer any further testimony.
[185]

Mr. CANNON.—It seems to me if the letter was of any importance it would have been presented here before this time; however, if you care to postpone the matter until you receive it you may do so.

Mr. HART.—I do not care to do so. I will rest.

Mr. WINTER.—We have no testimony to offer.

Witness excused.

Case closed.

Filed October 26, 1921. G. H. Marsh, Clerk.
[186]

Complainant's Exhibit No. 6.

Will arrange to take up about Dec. 23-24.

Make all statements to Lockhaven. Send copy to Spokane. He will send check to cover. [187]

Send circular and copy of attorney's opinion.

Get off tomorrow.

I. A. Shaffer, Jr. Lockhaven, Pa.

178 *William P. Hopkins and I. A. Shaffer, Jr.*

Ship bond to Est. of A. H. Hopkins, Lockhaven,
Pa. [188]

Rigby Ind. S. D. #5

3000 — 1934

4000 — 1933

3000 — 1932

10000

Buhl Highway Dist.

10,000 of 1935

Dec. [189]

Port of Bay City.

\$10,000 — 1934

Likely take another 10 or 20 thousand.

10,000

5,000

10,000

10,000

10,000

15,000

\$60,000 [190]

Mr. Hopkins
Bonner Co. S. D. #1

3000 — 1932

3000 — 1933

4000 — 1934

10000

Tremont & Madison

~~3000~~ ~~1935~~ 3000 — 1939

~~3000~~ ~~1936~~ 3000 — 1938

~~3000~~ ~~1937~~ 3000 — 1937

~~1000~~ ~~193~~ 3000 — 1936

3000 — 1935

The Hayburn Paul H. D.

5000 — 1934 [191]

Get full data Re Multnomah Drainage Dist. [192]

Port of Bay City

2000

1925 — ~~3,800~~ 1000 in 1000 Dem.

26 — 21,000

27 — 22,000

28 — 5,000

~~29~~

30 — 500

260 Sec.

25 — 26,000

26 — 26,000

27 — 26,000

28 —	11,000	
29 —	4,000	
30 —	4,000	
31 —	1,000	
32 —	1,000	
33 —	1,000	25,000
34 —	none	26,000

Filed October 26, 1921. G. H. Marsh, Clerk.
[193]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 2 to 193, inclusive, constitute the transcript of record on appeal from the order of the District Court of the United States for the District of Oregon upon the petition of William P. Hopkins and I. A. Shaffer, Jr., Trustees of the Estate of A. C. Hopkins, Deceased, appellants, against Earl C. Bronaugh, as Trustee in Bankruptcy of the Estate of Morris Brothers, Incorporated, Bankrupt, appellees. That the foregoing pages are a true and complete transcript of the record and proceedings had in said court in the matter of said petition of said trustees of said A. C. Hopkins Estate as the

same appear of record and on file at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$54.35, and that the same has been paid by the said appellants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this 15th day of December, 1921.

[Seal]

G. H. MARSH,
Clerk. [195]

[Endorsed]: No. 3810. United States Circuit Court of Appeals for the Ninth Circuit. William P. Hopkins and I. A. Shaffer, Jr., as Trustees of the Estate of A. C. Hopkins, Deceased, Appellants, vs. Earl C. Bronaugh, as Trustee in Bankruptcy of the Estate of Morris Brothers, Inc., Bankrupts, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Oregon.

Filed December 19, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

